DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of the Environment, pursuant to the authority set forth in the sections 5 and 6(b) of the District of Columbia Air Pollution Control Act of 1984, as amended, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06(b)), section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)), Mayor's Order 98-44, dated April 10, 1998, and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to amend Chapter 4, reserve Chapters 11-14, and adopt a new Chapter 15 to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*. Further, these rules shall not become effective until approved by the Council of the District of Columbia, or forty-five (45) days after submission to the Council, not including Saturdays, Sundays, legal holidays, and days of Council recess, if the Council has not disapproved these rules.

The proposed rules are necessary to amend general conformity requirements and adopt new transportation conformity regulations that will help develop and implement the air quality State Implementation Plan (SIP). The air quality SIP includes conformity of federal actions based on the federal Clean Air Act, §§ 110 and 171-193 (Part D), 42 U.S.C. §§ 7410 and 7501 *et seq*., as amended. The federal conformity regulations in 40 CFR §§ 93.100 - .160 establish standards and procedures to follow when evaluating the conformity of federal projects to all applicable implementation plans.

Transportation conformity is a way to ensure that federal funding goes to transportation activities that are consistent with national, regional, and local air quality goals. A transportation conformity determination demonstrates that the total emissions projected for a plan or program are within the emissions limits established by the SIP, and that transportation control measures are implemented in a timely fashion. Transportation conformity applies to transportation plans, transportation improvement programs, and projects funded or approved by the Federal Highway Administration or the Federal Transit Administration in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or nitrogen dioxide. These areas are known as "nonattainment" and "maintenance" areas. The District of Columbia is currently in nonattainment for ozone and the annual fine particulate matter ($PM_{2.5}$) standard. The District is also a maintenance area for the daily $PM_{2.5}$ standard and carbon monoxide.

Since conformity commitments in the SIP must be enforceable, the District's responsibilities must be codified in the District of Columbia Municipal Regulations.

TITLE 20 DCMR (ENVIRONMENT) is amended as follows:

CHAPTER 4 is amended by striking section 403 and revising the heading for Chapter 4 to read:

AMBIENT MONITORING, EMERGENCY PROCEDURES, AND CHEMICAL ACCIDENT PREVENTION

CHAPTERS 11-14 are reserved.

CHAPTER 15, GENERAL AND TRANSPORTATION CONFORMITY, is added as follows:

1500 GENERAL CONFORMITY – PURPOSE

1500.1 In accordance with §§ 110 and 171-193 (Part D) of the Clean Air Act, 42 U.S.C. §§ 7410 and 7501 *et seq*., the District of Columbia (District) must develop an air quality State Implementation Plan (SIP) that includes conformity of federal actions. The federal conformity regulations in 40 CFR §§ 93.100 - .160 establish standards and procedures to follow when evaluating the conformity of federal projects to all applicable implementation plans.

1501 GENERAL CONFORMITY – REQUIREMENTS

1501.1 The requirements of 40 CFR §§ 93.150 - .160 (Subpart B), as amended, are hereby adopted by reference for purposes of determining conformity of federal actions to state or federal implementation plans.

1501.2 This rule only applies when the District of Columbia is designated as a nonattainment or maintenance area under the federal Clean Air Act, 42 U.S.C. §§ 7407d and 7407d3E.

1502 TRANSPORTATION CONFORMITY – PURPOSE

1502.1 In accordance with §§ 110 and 171-193 (Part D) of the Clean Air Act, 42 U.S.C. §§ 7410 and 7501 *et seq*., the District must develop an air quality SIP that includes conformity of transportation plans, programs, and projects funded or approved by the United States Department of Transportation; the metropolitan planning organization; the Federal Aid Highway Act of 1962, as amended, 23 U.S.C. § 134 *et seq*.; or the federal transit laws, 49 U.S.C. § 5303 *et seq.*

1502.2 In accordance with 40 CFR §§ 51.390 and 93.100 - .160, the District must periodically revise the air quality SIP to address transportation conformity.

1502.3 Information that the District submits to the MPO for purposes of seeking a transportation conformity determination shall demonstrate that the total emissions projected for a plan or program are within the emissions limits established by the SIP, and that transportation control measures (TCMs) included in United States Environmental Protection Agency-approved SIPs are implemented in a timely fashion.

1503 TRANSPORTATION CONFORMITY – CONSULTATION PROCESS

1503.1 The Metropolitan Planning Organization (MPO), Regional Planning Organization (RPO), the District Department of the Environment (DDOE or the Department), and the District Department of Transportation (DDOT) shall comply with the procedures in this chapter governing interagency consultation, conflict resolution, and public consultation with each other and with divisional or regional offices of the United States Environmental Protection Agency (EPA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) on the development of:

(a) Control strategy implementation and maintenance plan revisions;

(b) The list of transportation control measures (TCMs) in applicable implementation plans;

(c) The Unified Planning Work Program (UPWP), in accordance with 23 CFR § 450.314;

(d) Transportation plans;

(e) Transportation improvement programs (TIPs); and

(f) Associated conformity determinations required by this chapter.

1503.2 An agency may not participate in the consultation process unless it is identified in this chapter.

1504 TRANSPORTATION CONFORMITY – INTERAGENCY CONSULTATION REQUIREMENTS

1504.1 In accordance with this chapter, representatives of the MPO, RPO, DDOE, and DDOT shall undertake an interagency consultation process with the FHWA, FTA, and EPA on the development of the UPWP, transportation plans, TIPs, SIPs, associated conformity determinations, and any revisions to the plans or programs thereof as follows:

(a) The MPO is the lead agency responsible for preparing an amendment or revision of the UPWP, the transportation plan, or the TIP, and for making conformity determinations;

(b) DDOE is the lead agency responsible for preparing revisions to the SIP, and incorporating TCMs recommended by the MPO and DDOT; and

(c) In the case of metropolitan nonattainment and maintenance areas that have a certified RPO, the RPO is the agency responsible for preparing an air quality plan, and for assuring the adequacy of the interagency consultation process with respect to the development of the proposed air quality plan, and any amendments or revisions to the plan.

1504.2 When serving as lead agency, the MPO, RPO, DDOT, and DDOE have the following responsibilities:

(a) Initiating the applicable consultation process by notifying other participants, convening meetings, preparing summaries, assuring that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, maintaining a written record of the consultation process, and providing final documents and supporting information to each participating agency after approval or adoption;

(b) Enabling regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, any determination of conformity on transportation plans or TIPs, or the development of a SIP), including meetings beginning on a date determined by the lead agency to be adequate to meet the date a final decision is required and continuing at a frequency mutually agreed upon by the affected agencies;

(c) Convening meetings of technical staff as necessary;

(d) Conferring with all other agencies identified in § 1503.1 with an interest in the planning process, providing all information to those agencies needed for meaningful input, soliciting early and continuing input from those agencies; and

(e) Considering the views of each agency and responding to those views in a timely, substantive written manner, and making the views and written response part of the record of any decision or action.

1504.3 In addition to serving as lead agency pursuant to § 1504.1(a), the MPO is responsible for:

(a) Developing or approving transportation and related socioeconomic data and local planning assumptions, and providing data and assumptions for use in air quality analysis for SIP tracking and conformity of transportation plans, TIPs, and projects;

(b) Providing transportation demand forecasting for development of on-road mobile source emissions inventories by DDOE and DDOT;

(c) In cooperation with DDOT, evaluating potential TCM projects and impacts;

(d) In cooperation with DDOT, monitoring regionally significant projects to determine a need for emissions modeling;

(e) In cooperation with DDOT, providing technical and policy input into the development of emissions budgets;

(f) In cooperation with DDOT, consulting with the RPO on emissions analysis for transportation activities which cross the borders of the MPO or nonattainment areas;

(g) In cooperation with DDOT, determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial roadway or higher classifications, fixed guideway systems, or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(h) In cooperation with DDOT, assuring that plans for construction of regionally significant projects which are not FHWA or FTA funded or approved projects (including projects for which alternative locations, design concept and scope, or the no-build options are still being considered), including all plans by recipients of funds designated under the Federal Aid Highway Act of 1962,

as amended, 23 U.S.C. § 134 *et seq*., or the federal transit laws, 49 U.S.C. § 5303 *et seq.*, are disclosed by the MPO members, and that any changes to those plans are involved in the interagency consultation process with the MPO and DDOT, and the recipients of funds designated under 23 U.S.C. § 134 *et seq*., or 49 U.S.C § 5303 *et seq*.;

(i) In cooperation with DDOT, designing, scheduling, and funding research and data collection efforts and model developments in regional transportation, such as household or travel transportation surveys;

(j) In cooperation with DDOT and DDOE, evaluating and choosing each model or models and associated methods and assumptions to be used in regional transportation demand analysis, including vehicle miles traveled (VMT) forecasting;

(k) In cooperation with DDOT and DDOE, evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR § 93.127 should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason;

(l) In cooperation with DDOT and DDOE, making a determination as required by 40 CFR § 93.113, whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approvals or funding for TCMs, and as part of this consultation, considering whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCM or substitute TCMs or other emission reduction measures;

(m) In cooperation with DDOT and DDOE, determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or making conformity determinations;

(n) In cooperation with DDOT and DDOE, evaluating events which may trigger new conformity determinations in addition to those triggering events established by 40 CFR § 93.104;

(o) In cooperation with DDOT and DDOE, developing assumptions regarding the location and design concept and scope of projects

which are disclosed to the MPO as required by this regulation, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR § 93.122, as amended;

(p) In cooperation with DDOT and DDOE, consulting with the FHWA and FTA on timely action on final findings of conformity; and

(q) In cooperation with DDOT and DDOE, obtaining guidance on conformity and the transportation planning process for agencies involved in the interagency consultation process.

1504.4 In addition to serving as lead agency pursuant to § 1504.2, DDOT is responsible for:

(a) Circulating draft and final environmental impact or assessment documents to appropriate agencies;

(b) Convening air quality technical review meetings on specific projects as needed or when requested by other agencies; and

(c) Identifying, as required by 40 CFR § 93.123, projects located at sites in $PM_{2.5}$ nonattainment areas which will have vehicle and roadway emission and dispersion characteristics which are essentially identical to those sites which have violations verified by monitoring and, therefore, require qualitative or quantitative $PM_{2.5}$ hot-spot analysis as required by 40 CFR §§ 93.100 - .129 (Part 93, Subpart A), as amended.

1504.5 In addition to serving as lead agency pursuant to § 1504.1(b), DDOE is responsible for:

(a) Developing emissions inventories and budgets;

(b) Tracking attainment of air quality standards and emission factor model updates;

(c) Gaining final approval at the District level for control strategy implementation plan revisions and maintenance plans;

(d) In cooperation with DDOT, evaluating and choosing each model or models and associated methods and assumptions to be used in hot-spot analysis;

(e) In cooperation with DDOT and the MPO, consulting with the EPA on review and approval of updated motor vehicle emissions factors, emission inventories, and budgets;

(f) In cooperation with DDOT and the MPO, obtaining guidance on conformity criteria and procedures for the agencies involved in the interagency consultation process; and

(g) In nonattainment areas where an RPO has been certified, cooperating with the RPO in the development of emissions inventories and budgets, and in the development of regional air quality plans.

1504.6 When not fulfilling the responsibilities of a lead agency, reviewing and commenting as appropriate (including comments in writing) on all proposed decisions and actions in a timely manner, attending consultation and decision meetings, providing input on any area of substantive expertise or responsibility, and providing technical assistance to the lead agency or to the consultation process when requested.

1505 TRANSPORTATION CONFORMITY – CONFLICT RESOLUTION ASSOCIATED WITH CONFORMITY DETERMINATIONS

1505.1 Unresolved conflicts among District agencies, or between District agencies and the MPO, or among the MPO member jurisdictions, shall be identified by the MPO or agency in writing to the other MPO, DDOE, or DDOT, with copies to the FHWA, FTA, and EPA. The MPO's or the agency's written notice shall:

(a) Explain the nature of the conflict;

(b) Review options for resolving the conflict;

(c) Describe the MPO's or agency's proposal to resolve the conflict;

(d) Explain the consequences of not reaching a resolution; and

(e) Request that comments on the matter be received within two (2) weeks.

1505.2 If the action in § 1505.1 does not result in a resolution of the conflict, one of the following applies:

(a) If the conflict is between the MPO and DDOT, then the parties shall follow the coordination procedures of 40 CFR § 93.105(d);

(b) If the conflict is between the MPO or DDOT and DDOE, and the conflict cannot be resolved by the affected agency heads:

(1) The Director of DDOE may elevate the conflict to the Mayor in accordance with the procedures of subsection 1505.3; or

(2) If the Director of DDOE does not appeal to the Mayor within 14 days as provided in § 1505.3(a), the MPO may proceed with its final conformity determination; and

(c) In the case of interstate nonattainment areas, if the conflict involves agencies outside of the District, Maryland, or Virginia, and the conflict cannot be resolved by the affected agency heads, the conflict may be resolved in a manner mutually agreed to by the parties involved.

1505.3 Appeals to the Mayor by the Director of DDOE under the provisions of § 1505.2(b)(1) shall be in accordance with the following procedures:

(a) The Director of DDOE has 14 calendar days to appeal to the Mayor after the MPO or DDOT has notified the Director of DDOE of the MPO's or DDOT's resolution of the Department's comments;

(b) The notification to the Director of DDOE shall be in writing and shall be hand-delivered;

(c) The 14-day appeal commences when DDOT or MPO has confirmed receipt by the Director of DDOE of the agency's or MPO's resolution of the Department's comments;

(d) The appeal to the Mayor shall contain:

(1) The conformity determination and any supporting documentation;

(2) DDOE's comments on the determination; and

(3) Any response by the MPO or DDOT;

(e) DDOE shall provide a complete appeal package to the MPO and DDOT within 24 hours following the date on which the appeal is filed with the Mayor's Office;

(f) If the Mayor does not concur with the conformity determination, the Mayor may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis, or any combination of these;

(g) If the Mayor concurs with the conformity determination made by the MPO and DDOT, the MPO and DDOT may proceed with the final conformity determination; and

(h) The Mayor may delegate the Mayor's role in this process, but not to the agency head or staff of the DDOE or DDOT.

1505.4 This regulation does not prevent the District agencies and MPO from making efforts on their own initiative to obtain mutual conflict resolution through conferences or other appropriate means.

1506 TRANSPORTATION CONFORMITY – PUBLIC CONSULTATION PROCEDURES

1506.1 In accordance with 40 CFR § 93.105(e), the MPO shall:

(a) Establish a proactive public involvement process which provides reasonable opportunity for review and comment before taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR § 450.316(a) and (b);

(b) Release information supporting conformity determinations at the beginning of the public comment period; and

(c) Assess and impose reasonable charges for public inspection and copying of such information, consistent with the fee schedule contained in 1 DCMR §408.

1506.2 If the public disagrees with the MPO's decision about whether a project is regionally significant and whether it was modeled properly in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP, a written explanation shall be provided by the MPO upon request by the public.

1506.3 The MPO shall also provide an opportunity for public involvement in conformity determinations for projects when otherwise required by law.

1507 TRANSPORTATION CONFORMITY – INTERAGENCY CONSULTATION PROCEDURES

1507.1 The MPO, RPO, DDOT, and the Department may enter into agreements to set forth specific consultation procedures in more detail that are not in conflict with this chapter.

1508 TRANSPORTATION CONFORMITY – PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS

1508.1 Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.

1509 TRANSPORTATION CONFORMITY – ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES

1509.1 Written commitments to mitigation measures must be obtained prior to a positive conformity determination and project sponsors must comply with such commitments.

1599 DEFINITIONS

1599.1 The meanings ascribed to the definitions and abbreviations appearing in 20 DCMR § 199 shall apply to the terms and abbreviations in this chapter. In addition the following terms and phrases used in this chapter shall have the meanings set forth in this section unless the text or context of a particular section, subsection or paragraph provides otherwise.

Ambient Air – that portion of the atmosphere, external to buildings, to which the general public has access.

Applicable implementation plan – as defined in § 302(q) of the Clean Air Act, the portion(s) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), and which implements the relevant requirements of the Clean Air Act.

Control strategy implementation plan revision – the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy the Clean Air Act requirements for demonstrations of reasonable further progress and attainment, including implementation plan revisions

submitted to satisfy: § 172(c); §§ 182(b)(1), (c)(2)(A) and (B); §§ 187(a)(7) and(g); §§ 189(a)(1)(B), (b)(1)(A), and (d); and §§ 192(a) and (b), for nitrogen dioxide; and any other applicable provision of the Clean Air Act requiring a demonstration of reasonable further progress or attainment.

DDOE or the Department – the District Department of the Environment.

DDOT – the District Department of Transportation.

EPA – the United States Environmental Protection Agency.

FHWA – the Federal Highway Administration within the United States Department of Transportation.

FHWA/FTA project – any highway or transit project which is proposed to receive funding assistance and approval through the Federal Aid Highway program or the federal mass transit program, or requires FHWA or FTA approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA – the Federal Transit Administration within the United States Department of Transportation.

Highway project – an undertaking to implement or modify a highway facility or highway related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Maintenance area – any geographic region of the United States previously designated nonattainment under of the § 107 of the Clean Air Act, 42 U.S.C. § 7407, and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

Maintenance plan – a revision to the applicable implementation plan, meeting the requirements of the § 175A of the Clean Air Act, 42 U.S.C. § 7505a.

Mayor – the Mayor of the District of Columbia.

MPO or Metropolitan Planning Organization – the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. § 134 and 49 U.S.C. § 5303. It is the forum for cooperative transportation decision-making. The "National Capital Region Transportation Planning Board (TPB)" is the MPO for the Washington region. The TPB is comprised of: Frederick, Montgomery, and Prince George's counties in Maryland; Arlington, Fairfax, Frederick, Loudoun, and Prince William Counties, and the cities of Alexandria, Fairfax, Falls Church and Manassas in Virginia; and the District of Columbia.

Nonattainment area – any geographic region of the United States which has been designated as nonattainment under § 107 of the Clean Air Act, 42 U.S.C. § 7407, for any pollutant for which a national ambient air quality standard exists.

$PM_{2.5}$ – particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by the applicable reference method or an equivalent method.

Project – a highway project or transit project.

Regionally significant project – a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum, all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

RPO or Regional Planning Organization – the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the Clean Air Act, 42 U.S.C. § 7504. The organization may include elected officials of local governments in the affected nonattainment area, and representatives of DDOE, DDOT, the MPO for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making. The RPO for the Washington region is the Metropolitan Washington Air Quality Committee (MWAQC).

State – the District of Columbia.

Statewide transportation improvement program – a staged, multiyear, intermodal program of transportation projects covering the State, which is consistent with the Statewide transportation plan and metropolitan transportation plans, and developed under 23 CFR §§ 450.300 - .338.

Statewide transportation plan – the official intermodal Statewide transportation plan that is developed through the Statewide planning process for the State, under 23 CFR §§ 450.300 -.338.

TCM or transportation control measure – any measure that is specifically identified and committed to in the state implementation plan that is either one of the types listed in § 108 of the Clean Air Act, 42 U.S.C. § 7408(f), or any other measure to reduce emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this chapter.

TIP or transportation improvement program – a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR §§ 450.300 - .338.

Transit – mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project – an undertaking to implement or modify a transit facility or transit related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation plan – the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR §§ 450.300 - .338.

Transportation project – a highway project or a transit project.

USDOT – the United States Department of Transportation.

Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Ms. Cecily Beall, District Department of the Environment, Air Quality Division, 51 N Street, NE, 3rd Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 19(a)(3) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980, (D.C. Law 3-98; D.C. Official Code § 47-2885.18.01(a)(3)); the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901.01); Mayor's Order 98-48, dated April 15, 1998, Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731); Section 15 of the District of Columbia Drug Manufacture and Distribution Licensure Act of 1990, effective June 13, 1990, (D.C. Law 8-137; D.C. Official Code § 48-714(a)); and Mayor's Order 98-88, dated May 29, 1998; hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 13 (Prescriptions and Distribution) of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of the amendments is to clarify the requirements for dispensing prescription by mail, to set forth the requirements for delivering prescriptions to patients, to set forth the requirements for dispensing non-controlled substances, to clarify and consolidate the requirements for distribution to another practitioner, supplier or a reverse distributor, to amend the regulations concerning generic substitutions and dosage form substitutions, to set forth the requirements for making therapeutic drug interchanges, and to prohibit a pharmacy from accepting any unused prescription or drug after it has been dispensed or sold, for the purpose of re-dispensing or resale to any person.

This rulemaking was previously published as proposed rulemaking on May 25, 2007 at 54 DCR 5300. The Department received written comments from the National Association of Chain Drugs Stores and Kaiser Permanente. The Department subsequently amended the proposed rulemaking §§ 1315.4 - 1315.6, 1315.8, 1325.16, 1326, 1327, 1399.1, and added new § 1328. The amended rulemaking was then republished as proposed rulemaking on May 16, 2008 at 55 DCR 5741 to provide thirty (30) days to receive comments on the revised rulemaking.

In response to the revised rulemaking the Department received public comments from the National Association of Chain Drug Stores. The Department subsequently amended §§ 1306.2, 1310.1, 1326.1(a) of the proposed rulemaking. The amended rulemaking is being republished to provide thirty (30) days to receive comments on the revised rulemaking. These Proposed Rules supersede those published on May 16, 2008.

The following rulemaking action is proposed:

CHAPTER 13 (PRESCRIPTIONS AND DISTRIBUTION) is amended as follows:

Section 1306.2 is amended to read as follows:

1306.2 A prescription for a controlled substance listed in Schedule II shall not be filled if submitted more than thirty (30) days after the date on which the prescription is dated.

Section 1308.1 is amended to read as follows:

1308.1 The pharmacist filling a written or emergency oral prescription for a controlled substance listed in Schedule II shall affix to the package a label meeting the requirements set forth in § 1912.2 of this title.

Section 1310.1 is amended to read as follows:

1310.1 A prescription for a controlled substance listed in Schedule III, IV, or V may not be filled or refilled more than six (6) months after the date on which the prescription was issued.

Section 1312.1 is amended to read as follows:

1312.1 The pharmacist filling a prescription for a controlled dangerous substance listed in Schedule III, IV or V shall affix to the package a label meeting the requirements set forth in § 1912.2 of this title.

The section heading for 1315 is amended to read as follows:

1315 DELIVERY OF PRESCRIPTION MEDICATION BY MAIL OR CARRIER

Section 1315 is amended to read as follows:

1315.1 This section shall apply to a pharmacy's delivery of filled prescriptions for individual patients by United States Postal Service, common carrier, employee or courier service to an address within the District of Columbia. Where a delivery is to an address outside of the District of Columbia, the pharmacy shall be governed by the laws of the state to which the prescription is being delivered.

1315.2 A licensed pharmacist shall supervise the dispensing of prescription drugs or devices by mail, common carrier, employee or courier service.

1315.3 The prescription shall contain all requirements specified for prescriptions as listed within this chapter and shall be packaged and sent in conformance with the applicable federal laws and regulations of the U.S. Department of Justice, Drug Enforcement Administration 21 CFR §§ 1300 *et seq.*, and the U.S. Postal Service

18 U.S.C. § 1716.

1315.4 A pharmacy may deliver the following by employee or courier, but shall not dispense the following by mail or common carrier:

(a) Antibiotics that have been reconstituted;

(b) Prescription drugs generally recognized to be subject to significant deterioration due to heat, cold, fermentation, or prolonged agitation unless it can be documented that the drug was shipped according to industry recognized shipping standards; or

(c) Any other drug or device which federal or District law prohibits dispensing by mail.

1315.5 A Prescription drug or device shall be shipped by U.S. Postal Service, common carrier, employee, or courier service unless the purchaser agrees in advance to another means of delivery that does not violate the provisions of this chapter.

1315.6 Prescription drugs and medical devices dispensed by any method shall be packaged and sent in conformance with the applicable federal and District laws and regulations and standards pertaining to temperature, light, and humidity and in containers that are resistant to breaking, denting, and tampering.

1315.7 A prescription medication may be delivered to:

(a) The patient for whom the prescription is prescribed;

(b) Wherever the patient is located;

(c) An agent authorized by the patient; or

(d) The residence of the patient, regardless of whether the patient is present at the residence at the time of delivery.

1315.8 If a patient authorizes delivery of a prescription medication or device to an agent at a location other than the pharmacy or the patient's residence, the pharmacy shall document in a readily retrievable record:

(a) The patient's authorization;

(b) The identity of the agent to whom the medication is sent; and

(c) The date, time; and location where the medication was sent.

Section 1320 is amended to read as follows:

1320 DISTRIBUTION BY A DISPENSER TO ANOTHER PRACTITIONER OR A REVERSE DISTRIBUTOR

1320.1 A practitioner who is authorized to dispense a controlled substance may distribute (without being registered to distribute) a quantity of the substance to:

(a) A reverse distributor who is registered to receive controlled substances under federal and District law; or

(b) Another practitioner for the purpose of general dispensing by the practitioner to his or her patients, provided that the following conditions are satisfied:

(1) The practitioner to whom the controlled substance is to be distributed is registered appropriately to dispense that controlled substance;

(2) The distribution is recorded by the distributing practitioner and by the receiving practitioner in accordance with 21 CFR § 1304.22(c);

(3) If the substance is listed in Schedule I or II, an order form shall be used as required by 21 CFR § 1305; and

(4) The total number of dosage units of all controlled substances distributed by the practitioner pursuant to this section, during the twelve (12) month period in which the practitioner is registered to dispense, does not exceed five percent (5%) of the total number of dosage units of all controlled substances distributed and dispensed by the practitioner during the twelve (12) month period.

1320.2 If at any time during the twelve (12) month period during which the practitioner is registered to dispense, the practitioner has reason to believe that the total number of dosage units of all controlled substances which will be distributed by him or her to another practitioner pursuant to this section will exceed five percent (5%) of the total number of dosage units of all controlled substances distributed and dispensed by him or her during the twelve (12) month period, the practitioner shall obtain a registration to distribute controlled substances.

Section 1321 is amended to read as follows:

1321 DISTRIBUTION TO SUPPLIER

1321.1 A person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance, to the person from whom he or she obtained it or to the manufacturer of the substance, or, if designated, to the manufacturer's registered agent for accepting returns, provided

that a written record is maintained containing the following:

(a) The date of the transaction;

(b) The name, form, and quantity of the substance;

(c) The name, address, and controlled substance registration number(s), if any, of the person making the distribution; and

(d) The name, address, and controlled substance registration number(s), if known, of the supplier or manufacturer.

1321.2 An order form shall be used in the manner prescribed in 21 CFR § 1305, and shall be maintained as the written record for a controlled substance listed in Schedule I or II which is returned. Any person not required to register pursuant to sections 302(c) or 1007(b)(1) of the Federal Act 21 USC § 822(c) or 957(b)(1) shall be exempt from maintaining the records required by this section.

1321.3 Distributions referred to in this section may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned provided that prior arrangement has been made for the return and the person making the distribution delivers the controlled substance directly to an agent or employee of the person to whom the controlled substance is being returned.

Section 1322 is amended to read as follows:

1322 DISTRIBUTION UPON DISCONTINUANCE OR TRANSFER OF BUSINESS

1322.1 A registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall:

(a) Return for cancellation his or her District of Columbia certificate of registration to the Director;

(b) Return for cancellation his or her federal registration certificate and any unexecuted order forms in his or her possession to the DEA; and

(c) Dispose of any controlled substances in his or her possession in accordance with 21 CFR § 1307.21.

1322.2 A registrant desiring to discontinue business activities altogether or with respect to controlled substances (by transferring those business activities to another person) shall submit in person or by registered or certified mail, return receipt requested, to the Director, at least fourteen (14) days before the date of the

proposed transfer (unless the director waives this time limitation in individual instances) the following information:

(a) The name, address, controlled substance registration number(s), and authorized business activity of the registrant discontinuing the business (registrant-transferor);

(b) The name, address, controlled substance registration number(s), and authorized business activity of the person acquiring the business (registrant-transferee);

(c) Whether the business activities will be continued at the location registered by the person discontinuing the business, or moved to another location (if the latter, the address of the new location shall be listed); and

(d) The date on which the transfer of controlled substances will occur.

1322.3 Unless the registrant-transferor is informed by the Director, before the date on which the transfer was stated to occur, that the transfer shall not be permitted to occur, the registrant-transferor may distribute (without being registered to distribute) controlled substances in his or her possession to the registrant-transferee in accordance with the following:

(a) On the date of transfer of the controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with 21 CFR § 1304.11. This inventory shall serve as the final inventory of the registrant-transferor and the initial inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with the Director unless requested by the Director. Transfers of any substances listed in Schedule I or II shall require the use of order forms in accordance with CFR § 1305;

(b) On the date of transfer of the controlled substances, all records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, under 21 CFR § 1304, shall be transferred to the registrant-transferee. Responsibility for the accuracy of the records prior to the date of transfer shall remain with the transferor. Responsibility for the custody and maintenance of the records after the date of the transfer shall be upon the transferee; and

(c) In the case of registrants required to make reports pursuant to 21 CFR § 1304, a report marked “Final” shall be prepared and submitted by the registrant-transferor showing the disposition of all the controlled substances for which a report is required; no additional report will be required from him or her, if no further transactions involving controlled substances are consummated by him or her. The initial report of the registrant-transferee shall account for

transactions beginning with the day next succeeding the date of discontinuance or transfer of business by the transferor-registrant and the substances transferred to him or her shall be reported as recipients in his or her initial report.

Section 1323 is amended to read as follows:

1323 MANUFACTURE AND DISTRIBUTION OF CONTROLLED SUBSTANCE SOLUTIONS AND COMPOUNDS BY A PHARMACIST

1323.1 A pharmacist may manufacture (without being registered to manufacture) an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in a proportion that shall not exceed twenty (20%) of the complete solution, compound, or mixture.

A new section 1325 is added to read as follows:

1325 ISSUANCE OF NON-CONTROLLED SUBSTANCES

1325.1 A pharmacist shall dispense a non-controlled substance, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, or medical device pursuant to a valid written, oral, facsimile, or electronic prescription issued in compliance with this chapter by a licensed practitioner authorized to prescribe the substance or medical device.

1325.2 A prescription issued by a prescribing practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner only pursuant to the directions and order of the practitioner, and in conformance with applicable federal and District of Columbia laws and regulations and this chapter.

1325.3 A prescription order shall be issued or dispensed only for a legitimate medical purpose by a prescribing practitioner acting in the usual course of his or her professional practice.

1325.4 The prescribing practitioner and the pharmacist shall be jointly responsible for compliance with this chapter in prescribing and dispensing a prescribed substance or medical device.

1325.5 Any person issuing a prescription and any person knowingly filling a prescription which is not in conformity with this chapter shall be subject to the penalties provided for violations of the Act and this chapter.

1325.6 Non-controlled substance prescriptions shall have a label affixed to the package meeting the requirements as set forth in § Chapter 19 of this Title.

1325.7 The label required in § 1325.6 does not apply to a prescription for a non-

controlled substance that is prescribed for administration to a patient who is institutionalized if the following limitations are observed:

(a) Not more than a thirty (30) day supply or one hundred (100) dosage units, whichever is less, of the prescription is dispensed at one time;

(b) The prescription controlled substance is not in the possession of the patient prior to administration;

(c) The institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of the prescription substance; and

(d) The system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and sets forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

1325.8 A prescription for a non-controlled substance shall not be filled if presented for dispensing more than one (1) year after the date on which the prescription was issued.

1325.9 The total amount dispensed under one prescription order for a non-controlled substance, including refills, shall be limited to a one (1) year supply, not to exceed other applicable federal or District laws.

1325.10 Each refilling of a prescription shall be entered on the back of the prescription, or on another appropriate, uniformly maintained, readily retrievable record such as a medication record. The following information must be retrievable by the prescription number:

(a) The name of the drug or the name and manufacturer of the substituted drug if different than the originally prescribed or filled drug;

(b) The dosage form of the drug dispensed;

(c) The date of each refilling and the quantity dispensed;

(d) The identity or initials of the dispensing pharmacist for each refill; and

(e) The total number of refills for that prescription.

1325.11 If the pharmacist merely initials and dates the back of a prescription or in the electronic record, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription.

1325.12 The prescribing practitioner may authorize additional refills of a non-controlled substance on the original prescription through an oral refill authorization transmitted to the pharmacist provided that the following conditions are met:

(a) The total quantity authorized, including the amount of the original prescription, does not extend beyond one year from the date of issuance of the original prescription;

(b) The pharmacist obtaining the oral authorization shall record the date, quantity of refill, and number of additional refills authorized, on the reverse of the original prescription and initial the prescription documenting that he or she received the authorization from the prescribing practitioner who issued the original prescription; and

(c) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

1325.13 Additional quantities of prescription non-controlled substances beyond the one year limitation, shall only be authorized by a prescribing practitioner through the issuance of a new and separate prescription.

1325.14 As an alternative to the procedures provided under § 1325.10 of this chapter, an automated data processing system may be used for the storage and retrieval of refill information for prescription drug orders and prescription records.

1325.15 The partial filling of a prescription for a non-controlled substance is permissible, if the pharmacist is unable to supply the full quantity called for in the prescription, and he or she makes a notation of the quantity supplied on the face of the written or facsimile prescription (or written record of the oral prescription), provided that:

(a) Each partial filling is recorded in the same manner as a refilling;

(b) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed; and

(c) No dispensing occurs beyond one year after the date on which the prescription was issued.

1325.16 A pharmacist shall notify the prescribing physician if:

(a) The pharmacist is unable to dispense the remaining portion of a partially filled prescription for a prescription non-controlled substance within a reasonable period of time;

(b) The inability to do so lies with the pharmacy; and

(c) In the professional judgment of the pharmacist the delay may jeopardize or alter the drug therapy of the patient.

A new section 1326 is added to read as follows:

1326 **GENERIC SUBSTITUTION**

1326.1 A pharmacist may dispense a generically equivalent drug product if:

(a) The generic product costs the patient less than the prescribed drug product;

(b) The patient does not refuse the substitution; and

(c) The prescribing practitioner does not indicate on the written, facsimile, or electronic prescription form that the specific prescribed brand is to be dispensed by marking "DISPENSE AS WRITTEN," "BRAND NECESSARY," "NO SUBSTITUTION," or other similar language.

1326.2 If a prescription is transmitted orally, the prescribing practitioner or the practitioner's authorized agent shall prohibit substitution by specifying "BRAND NECESSARY," "NO SUBSTITUTION," or other similar language.

1326.3 The formulary of drug products for the District of Columbia shall be the chemical and generic drugs contained in the publication, "Approved Drug Products with Therapeutic Equivalence Evaluations (also known as the Orange Book)", and its monthly updates. This drug formulary is incorporated by reference as a part of this chapter.

1326.4 A copy of the publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," may be obtained from the Superintendent of Documents, Government Printing Office of the United States, Washington, DC 20402. The electronic version may be accessed on line at http://www.fda.gov/cder/ob/default.htm This URL is subject to change.

A new section 1327 is added to read as follows:

1327 SUBSTITUTION OF DOSAGE FORMS

1327.1 A pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided that:

(a) The pharmacist notifies the patient of the dosage form substitution prior to filling the prescription;

(b) The pharmacist documents the substitution on the prescription record;

(c) The pharmacist notifies the practitioner of the dosage form substitution prior to dispensing or as soon as is reasonably possible thereafter; and

(d) The dosage form dispensed contains the identical amount of the active ingredients as the dosage prescribed for the patients, is not an enteric-coated or time release product; and does not alter desired clinical outcomes.

1327.2 The notification required in § 1327.1(c) shall not apply to those circumstances where the dosage form substitution is made in order to comply with the prescriber's intent, (i.e. physician prescribed tablets but the medication only comes in capsules.)

1327.3 Substitution of dosage form shall not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

A new section 1328 is added to read as follows:

1328 THERAPEUTIC INTERCHANGE

1328.1 This section shall not apply to generic drug substitutions. For generic drug substitutions, see the requirements of § 1326 of this chapter.

1328.2 As used in this section, "therapeutic interchange" means the dispensing of chemically different drugs that are considered to be therapeutically equivalent.

1328.3 A therapeutic interchange shall not be made without the prior approval of the prescribing practitioner.

1328.4 The approval required pursuant to § 1328.3 may be in the form of a readily retrievable, written, documented policy maintained by the pharmacy which clearly indicates that the provider has intended to approve the therapeutic interchange.

1328.5 The patient shall be notified of the therapeutic interchange prior to, or upon delivery, of the dispensed prescription to the patient. The notification shall include:

(a) A description of the change;

(b) The reason for the change; and

(c) Contact information indicating who the patient may contact with questions concerning the change.

A new section 1329 is added to read as follows:

1329 RETURN OF PRESCRIPTION DRUGS

1329.1 In the interest of the public health of the District of Columbia and the possible adverse effects which the resale of drugs may have upon the health of the public, it shall be unlawful for any licensed pharmacist to accept any unused prescription or drug, in whole or part, after it has been dispensed or sold, for the purpose of re-dispensing or resale to any person.

Section 1330 is repealed.

Section 1331 is repealed.

Section 1399.1 is amended as follows:

a) The following terms with the ascribed meanings are added as follows:

Automated medication system— A robotic, computerized, or mechanical device and its components that distributes medications in a licensed health care facility, or prepares medications for final dispensing by a licensed pharmacist to a patient or a patient's agent, and maintains related transaction information.

Board—The District of Columbia Board of Pharmacy established by the District of Columbia Health Occupations Revision of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01.)

Centralized automated medication system— An automated medication system located in a pharmacy from which medication is distributed or prepared for final dispensing by a licensed pharmacist for a specific patient.

Common carrier— An organization that transports persons or goods according to defined routes and schedules and offers its services to the general public such as FedEx and UPS.

Courier— An individual or entity that is hired to take parcels directly from one place to another.

DEA— The United States Drug Enforcement Administration

Decentralized automated medication system— An automated medication system that is located outside of the pharmacy in a health care facility with an on-site pharmacy and in which medication is stored in a manner that may be, but

need not be, patient specific.

Dispensing pharmacist— A pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient's agent, verifies, checks, and initials the medication record.

Non-Prescription drug— A drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of the District of Columbia and the federal government and includes both the classifications over-the-counter drugs and restricted drugs.

Restricted drug— A drug for which a prescription is not required that pursuant to District of Columbia or federal law or regulation must be stored behind the pharmacy counter and which shall not be directly accessible to the public.

Therapeutic interchange— The dispensing of chemically different drugs that are considered to be therapeutically equivalent.

Therapeutically equivalent drugs- Drug products that are chemically dissimilar but produce essentially the same therapeutic outcome and have similar toxicity profiles. Usually these drugs are within the same pharmacologic class. They frequently differ in chemistry, mechanism of action, and pharmacokinetic properties, and may possess different adverse reaction, toxicity, and drug interaction profiles.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Kenneth Campbell, General Counsel, the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the Department of Health Care Finance, pursuant to the authority set forth in Section 7a of the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code §7-1405.01), as amended, and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code §7-771.05(6)), hereby gives notice of the intent to adopt an amendment to Section 3304, of Title 22 of the District of Columbia Municipal Regulations (DCMR), entitled "Eligibility Criteria Effective June 1, 2006." The purpose of these proposed rules is to amend the eligibility requirements of the D.C. HealthCare Alliance (Alliance) program to exclude individuals who have third party insurance, including Medicare, from enrollment in the Alliance program.

The Alliance program was designed to be a safety net for District residents without any health insurance. The program currently provides health benefits for more than 45,000 low-income residents. Alliance enrollment has expanded rapidly since the program was implemented. The District remains committed to this safety net. However, in the current fiscal climate, the District can not sustain the Alliance without thoughtful policies to ensure the program's long term viability. Individuals with third party insurance, including Medicare, have alternate means of accessing health care. Additionally, the Alliance operates exclusively in a managed care environment, thereby creating significant benefit coordination issues (and limited capacity to leverage cost savings) when it is used as a wrap-around for other forms of health insurance. In order to ensure adequate funding to keep pace with the demand for Alliance benefits among the growing low-income populations, it is not financially feasible at this time to permit individuals with third party insurance to enroll in the Alliance program.

These rules will be submitted to the Council of the District of Columbia for approval pursuant to section 7a of the Health Care Privatization Amendment Act of 2001.

The Acting Director also gives notice of intent to take final rulemaking action to adopt the proposed rule amendment in not less than thirty (30) days from the date of publication of this notice in the *DC Register*.

Section 3304.2 (Eligibility Criteria Effective June 1, 2006) of Title 22 of the DCMR (Public Health and Medicine) is amended to read as follows:

3304.2 Eligibility for the D.C. HealthCare Alliance is limited to residents of the District of Columbia who are not eligible for Medicaid or Medicare or are not enrolled in any other third party health insurance program, and who live in households:

(a) With a countable income of less than 200 percent of the Federal Poverty Level; and

(b) With countable resources less than $ 4,000 (or $ 6,000 if the individual lives with a spouse or cares for a child who is residing in the home).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be submitted in writing to Julie Hudman, Acting Director, Department of Health Care Finance, 825 North Capitol Street, N.E., Suite 5135, Washington, D.C. 20002. Copies of this rule may be obtained from the same address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the intent to amend Chapter 41 of Title 29 of the District of Columbia Municipal Regulations ("DCMR"), entitled "Ticket to Work Demonstration Project for Individuals with HIV." This amendment will repeal Chapter 41 of Title 29 DCMR because the Ticket to Work Demonstration Project for individuals with HIV ("Demonstration Project") is no longer in existence.

The Demonstration Project was authorized under § 204 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) and provided health care coverage to individuals with potentially disabling conditions who work. This Demonstration Project tested the hypothesis that the provision of health care and related supports will prolong independence and employment and reduce dependency on disability income support programs. In a letter dated July 31, 2008, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") approved the District of Columbia's phase down plan for the Demonstration Project. When the program exhausted its CMS funding on December 31, 2008, the Demonstration Project ended.

The Director also gives notice of the intent to take final rulemaking action to adopt this amendment not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 41 of Title 29 of the DCMR is amended to read as follows:

CHAPTER 41 Repealed.

Comments on the proposed rule shall be submitted, in writing, to Julie Hudman, Ph.D., Director, Department of Health Care Finance, 825 North Capitol Street, NE, 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Additional copies of this proposed rule may be obtained from the above address.

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 22 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1121 (2001)) ("Act"), hereby gives notice of his intent to repeal Chapter 11**,** MORTGAGE LENDERS AND BROKERS, of Title 26A of the District of Columbia Municipal Regulations (DCMR) and adopt a new Chapter 11, MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The proposed rules provide for the licensing, examination, investigation, and supervision of mortgage lenders, mortgage brokers, and mortgage loan originators in the District of Columbia. The proposed rules will become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

26A DCMR, Chapter 11, MORTGAGE LENDERS AND BROKERS, is repealed.

26A DCMR is amended by adding a new Chapter, MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS, to read as follows:

CHAPTER 11 MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS

1100 SCOPE AND APPLICABILITY

1100.1 This chapter shall apply to any person who engages in business as a mortgage lender, mortgage broker, or mortgage loan originator in the District or who issues, makes, services, brokers, or originates a mortgage loan as defined in the Act.

1101 EXEMPTIONS

1101.1 Unless preempted by federal law, an affiliate or subsidiary of a federal, state, or District bank, trust company, savings bank, savings and loan association, or credit union is exempt from obtaining a license pursuant to the Act only if the affiliate or subsidiary maintains its principal office in the District and the parent company of the affiliate or subsidiary maintains its principal office in the District.

1102 GENERAL LICENSING REQUIREMENTS

1102.1 An applicant for a license to engage in business as a mortgage lender shall file a mortgage lender license application with the Department.

1102.2 An applicant for a license to engage in business as a mortgage broker shall file a mortgage broker license application with the Department.

1102.3 An applicant for a license to engage in business as a mortgage lender and a mortgage broker shall file a dual mortgage lender and broker license application with the Department.

1102.4 An applicant for a license to engage in business as a mortgage loan originator shall file a mortgage loan originator license application with the Department.

1102.5 A license to engage in the activity of a mortgage broker, mortgage lender, mortgage lender and mortgage broker (mortgage dual authority), or mortgage loan originator will be issued to an applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of the Act have been met.

1102.6 A license application shall be filed on a form prescribed by the Department, including all information required by the Department, and be accompanied by the required fees as prescribed in Appendix A.
For purposes of this chapter, a license application means an application processed through the Department or its designee such as the Nationwide Mortgage Licensing System and Registry or any other person or third party prescribed by the Commissioner. Any fees paid in connection with the processing of an application shall be non refundable.

1102.7 The application shall, at a minimum, contain information to demonstrate that:

(a) The applicant has never had a mortgage-related license revoked in any governmental jurisdiction;

(b) The applicant and each of its officers, directors, partners, and owners of a controlling interest have not been convicted of, or pled guilty or *nolo contendere* to a felony in a domestic, foreign, or military court:

(1) During the seven (7) year period preceding the date of the application for licensing and registration; or

(2) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or

money laundering.

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of the Act;

(d) The applicant has met the applicable capital and/or surety bond requirements required pursuant to the Act and sections 1107 and 1109 of these rules; and

(e) The applicant has paid all applicable fees as described in Appendix A of these rules.

(f) In the case of an applicant for a mortgage loan originator's license,

(1) The applicant has completed the pre-licensing education requirement described in the Act; and

(2) The applicant has passed a written test that meets the requirements described in the Act.

1102.8 The Department shall deny a license application if the application is incomplete, not accompanied by the fees required pursuant to section 1102.6 of these rules, or if there are any outstanding fees due to the Department.

1102.9 The Department shall approve or deny a license application not later than sixty (60) days from the date the Department determines that the application is complete.

1102.10 A licensee may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner. Such challenge must be in writing and include the specific information being challenged and supporting information to evidence that information being challenged is incorrect, invalid, or inappropriate.

1102.11 A challenge pursuant to subsection 1102.8 shall be filed within forty-five (45) business days from the date the information is received.

1102.12 The Department will respond to the challenge within fourteen (14) business days with one (1) of the following responses:

(a) Granting the challenge and entering the requested change;

(b) Granting the challenge and allowing the licensee to submit information to be entered into the system; or

(c) Denying the challenge.

1102.13 Acquisition of control applications filed pursuant to the Act shall be accompanied by the fee described in Appendix A of these rules.

1103 TERMINATION AND REASSIGNMENT OF MORTGAGE LOAN ORIGINATOR

1103.1 A mortgage loan originator shall disclose the mortgage loan originator's license number to all clients and residential mortgage loan applicants in writing at the time a fee is paid or a mortgage loan application is accepted.

1103.2 Upon the termination of the relationship between a mortgage loan originator and an employer, the employer shall return the original mortgage loan originator license to the Department within five (5) business days after the termination. The employer shall fully set forth the reason(s) for termination and shall submit such statement in the form and in the manner prescribed by the Commissioner.

1103.3 For a period of one (1) year after the termination of employment or association, the mortgage loan originator may request re-assignment of the license to another entity by submitting an application for a change to the Department and paying the required fee, as determined by the Commissioner.

1103.4 When a mortgage loan originator license is returned to the Department, the license shall become inactive and the mortgage loan originator shall not be authorized to engage in any residential mortgage loan origination activity unless and until the mortgage loan originator's license has been re-assigned to another entity and all required procedures have been followed to re-assign and reactivate such license.

1103.5 The mortgage loan originator license that has been returned to the Department and not re-assigned to another entity within one (1) year of termination of employment or affiliation shall be cancelled.

1104 BACKGROUND CHECKS

1104.1 To assist the Commissioner in his determination for licensure, an applicant for an original mortgage loan originator's license shall furnish the Department or its designee information concerning the applicant's identity, including, but not limited to the following:

(a) Fingerprints, less than ninety (90) days old, for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and

international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Department or its designee, including the submission of authorization for the Department or its designee to obtain the following:

(1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(2) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

1105 PRE-LICENSING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS

1105.1 In order to meet the pre-licensing education requirements for a mortgage loan originator, an applicant shall complete at least twenty (20) hours of pre-licensing education approved in accordance with subsection 1105.2.

1105.2 The twenty (20) hours of pre-licensing education requirements shall include at least the following courses approved by the Nationwide Mortgage Licensing System:

(a) Three (3) hours of federal law and regulations on mortgage and real estate related subject matter;

(b) Three (3) hours of ethics which shall include instruction on mortgage and real estate related fraud, consumer protection, and fair lending issues;

(c) Two (2) hours of training related to lending standards for the non-conventional mortgage product marketplace;

(d) Three (3) hours of District of Columbia mortgage lending laws and regulations; and

(e) Nine (9) hours of elective courses on mortgage and real estate related subject matter.

1105.3 An applicant for an original mortgage loan originator license, who is already licensed in another state, that requires testing, will be required to complete at least three (3) hours of District mortgage related courses.

1105.4 An applicant for an original mortgage loan originator license, who is already licensed in another state, that does not require testing, will be required to comply with the requirements of section1105.2.

1105.5 If the Nationwide Mortgage Licensing System and Registry has not approved twenty (20) hours of pre-licensing education requirements at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the first renewal cycle the applicant shall have taken the required pre-licensing education requirements.

1106 TESTING

1106.1 In order to meet the written test requirement an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

1106.2 A written test shall not be treated as a qualified written test for purposes of the preceding paragraph unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal law and regulation pertaining to mortgage origination;

(c) State law and regulation pertaining to mortgage origination; and

(d) Federal and state law and regulation, including instruction on fraud, consumer protection, the non-conventional mortgage marketplace, and fair lending issues.

1106.3 The test shall contain a national portion and a District of Columbia portion and the applicant must take and pass both parts, with a test score of not less than seventy-five percent (75%) on each part, unless excepted under subsection 1106.4.

1106.4 If the applicant has taken and passed the national portion in another jurisdiction, which has also issued to the applicant a mortgage loan originator license, the applicant is only required to take and pass, with a test score of not less than seventy-five percent (75%), the District of Columbia portion of the test.

1106.5 An individual shall not be considered to have passed a qualified written

test unless the individual achieves a test score of not less than seventy-five (75%) percent correct answers to questions.

1106.6 An individual may retake a test three (3) consecutive times. Each consecutive test may not occur less than thirty (30) days after the preceding test.

1106.7 After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

1106.8 A formerly licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test.

1106.9 If the Nationwide Mortgage Licensing System and Registry has not developed a qualified written test, to be administered by a test provider approved by the Nationwide Licensing System and Registry at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the first renewal cycle the applicant shall have taken and passed, in accordance with the standards established under this section, the qualified written test developed and administered by the Nationwide Mortgage Licensing System and Registry.

1107 EVIDENCE OF FINANCIAL RESPONSIBILITY

1107.1 For purposes of this section, references in the Nationwide Mortgage Licensing System and Registry to the terms “net worth” and “capital” are interchangeable

1107.2 A mortgage lender shall demonstrate and maintain capital of not less than two hundred thousand dollars ($200,000) per licensed location; a mortgage broker shall demonstrate and maintain capital of not less than twenty-five thousand dollars ($25,000) per licensed location. A mortgage dual authority licensee shall demonstrate and maintain capital of not less than two hundred and twenty-five thousand dollars ($225,000) per licensed dual authority location. Higher levels of capital may be required pursuant to section 1107.3.

1107.3 Where the Commissioner reasonably determines, that the financial history or condition, managerial resources and/or active earnings prospects of a licensee are not adequate, or where a licensee has sizeable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of classified or criticized assets, the Commissioner may prescribe a capital requirement for a licensee that is greater than the minimum.

1107.4 The amount and time frames for attaining a higher level of capital prescribed under this section shall be set forth in either:

(a) A final report of examination approved by the Commissioner;

(b) A corporate resolution executed by the licensee and approved by the Commissioner;

(c) A written memorandum of understanding or other agreement between the licensee and the Commissioner; or

(d) As a provision in a temporary or permanent cease and desist order or other enforcement action issued by the Commissioner.

1107.5 The maintenance of the minimum capital standards specified under this section shall be a requirement for continued licensure under the Act. Failure to meet and maintain such minimum standards may constitute grounds for the issuance of a cease and desist order and may also constitute grounds for license suspension or revocation under the Act.

1107.6 Failure to meet the minimum capital standards under the Act may constitute grounds for the denial of an application, the issuance of a cease and desist order, license suspension, or license revocation.

1108 CREDIT REPORT

1108.1 An applicant for a mortgage loan originator's license and each officer, director, partner, and owner of a controlling interest in an applicant for a mortgage lender or mortgage broker license shall provide authorization for the Department to obtain a credit report.

1108.2 Any credit report relied upon to grant a license must be less than ninety (90) days old.

1109 SURETY BOND

1109.1 An applicant for a mortgage lender, mortgage broker or mortgage dual authority license shall file a surety bond with each original application and any renewal application.

1109.2 The surety bond shall:

(a) Run to the Commissioner for the benefit of any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage origination, mortgage brokerage, or mortgage lending;

(b) Be issued by a surety company authorized to do business in the District;

(c) Be conditioned upon the applicant complying with all District and federal laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage loan originators and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied;

(d) Be continuously maintained thereafter for as long as any license issued under this chapter remains in force; and

(e) Be issued in the legal and trade name of the licensee.

1109.3 A bond filed by a mortgage lender, mortgage broker, or mortgage dual authority licensee shall cover all mortgage loan originators in their employ and licensed associated independent contractors.

1109.4 If an applicant for a mortgage lender, mortgage broker, or mortgage dual authority license has not conducted such business in the District in any of the three (3) calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection shall be in the amount of twelve thousand five hundred dollars ($12,500).

1109.5 If an applicant has conducted business as a mortgage lender, mortgage Broker, or mortgage dual authority licensee in the District in any of the three (3) calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage lender, mortgage broker, or mortgage dual authority licensee during the latest calendar year such business was conducted. The bond required in this circumstance shall be determined as follows:

(a) Where the total dollar amount of stated loans was one million dollars ($1,000,000) or less, the bond shall be in the amount of twelve thousand five hundred dollars ($12,500);

(b) Where the total dollar amount of stated loans was more than one million dollars ($1,000,000) but not more than two million dollars ($2,000,000), the bond shall be in the amount of seventeen thousand five hundred dollars ($17,500);

(c) Where the total dollar amount of stated loans was more than two million dollars ($2,000,000) but not more than three million dollars ($3,000,000), the bond shall be in the amount of twenty-five thousand dollars ($25,000); and

(d) Where the total dollar amount of stated loans was more than three million ($3,000,000), the bond shall be in the amount of fifty thousand dollars ($50,000).

1109.6 Subject to approval by the Commissioner, if an applicant files four (4) or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of two hundred thousand dollars ($200,000).

1109.7 When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

1109.8 Immediately upon recovery upon any action on the bond the licensee shall file a new bond pursuant to the requirements of this section.

1110 FINANCIAL STATEMENTS

1110.1 An applicant for a mortgage lender, mortgage broker, or mortgage dual authority license shall submit financial statements prepared in accordance with generally accepted accounting principles.

1110.2 The financial statements shall include, but not be limited to, a balance sheet, income statement, statement of cash flows, and all relevant notes thereto.

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1110.3 The financial statements shall include information for the current year to date through the most recent quarter ending date and for the preceding fiscal year, and shall include any other financial information as the Commissioner may require.

1111 RENEWAL OF LICENSE

1111.1 In order to renew a license, a licensee shall file a renewal license application, on a form prescribed by the Department, which shall be accompanied with the required fees as prescribed in Appendix A, and any other required information, at least thirty (30) days prior to the expiration date of the licensee's current license.

1111.2 All mortgage licenses shall expire on December 31st of each year.

1111.3 The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under the Act;

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 1112; and

(c) The mortgage loan originator has met applicable criminal background check requirements.

1111.4 If a mortgage loan originator has failed to complete continuing education requirements during the time period in which completion of the education requirements is due, as described in the Act, the mortgage loan originator's license shall be ineligible for renewal and shall be deemed to be inactive.

1111.5 A renewal license application filed after the renewal-filing deadline set forth in section 1111.1 above, shall be subject to, and accompanied by, a late renewal fee described in Appendix A in addition to any other fees imposed as prescribed in Appendix A.

1111.6 A license which has expired for sixty (60) days or more cannot be renewed. The licensee must apply for a new license.

1111.7 Any fees paid pursuant to this section shall be non-refundable.

1111.8 The Department shall approve or deny the renewal license application not later than sixty (60) days from the date a complete application is filed with the Department.

1112 CONTINUING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS

1112.1 In order to meet the continuing education requirements, a licensed mortgage loan originator shall complete, annually at least eight (8) hours of education, at least sixty (60) days prior to expiration of the license. The continuing education requirements shall include, but not be limited to, the following:

(a) Three (3) hours of federal law and regulations pertaining to mortgage related activity subject matters;

(b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) One (1) hour of District of Columbia law and regulations pertaining to mortgage related activity subject matters.

1112.2 The continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry. If the Nationwide Mortgage Licensing System and Registry has not reviewed and approved continuing education courses at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the next renewal cycle the applicant shall have taken and passed the required continuing education courses.

1112.3 A licensed mortgage loan originator may:

(a) Only receive credit for a continuing education course in the year in which the course is taken; and

(b) Not receive credit for taking the same course more than once in the same or successive years to meet the annual requirements for continuing education.

1112.4 A licensed mortgage loan originator, who is an instructor of an approved continuing education course, may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) credit hours for every one (1) hour taught.

1113 NOTIFICATION OF SIGNIFICANT EVENTS BY LICENSEE

1113.1 A mortgage lender, mortgage broker, mortgage dual authority licensee, or mortgage loan originator licensed under the Act shall notify the Commissioner in writing within five (5) business days of the occurrence of any fact or condition that exists that has a negative impact on the licensee's financial condition and ability to maintain the financial requirements under section 1107 or to perform financial obligations to fund mortgage commitments which preclude the licensee from operating in a safe and sound manner consistent with the Act, these regulations and in the best interest of District of Columbia consumers.

1113.2 A mortgage lender, mortgage broker, mortgage dual authority licensee, or mortgage loan originator licensed under the Act shall notify the Commissioner in writing within five (5) business days of the occurrence of any of the following significant developments:

(a) A charge of or conviction of any criminal felony offense;

(b) A charge of or conviction of any criminal misdemeanor offense involving financial services or a financial services related business; or any charge involving fraud, false

statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;

(c) Receipt of notification of license denial, cease and desist order, initiation of suspension or revocation proceedings, issuance of formal orders of suspension or revocation or other imposed disciplinary action, or other formal or informal regulatory action, from any state or federal agency against the licensee, and the reasons thereof;

(d) Receipt of notification of the initiation of any action against the licensee by the District of Columbia Office of the Attorney General or of any other state or federal agency, pursuant to the Act, or any other comparable consumer protection statute, and the reasons thereof;

(e) Settlement or resolution of any civil action or proceeding against the licensee involving fraud, misrepresentation, or wrongful taking of property; or

(f) Filing of a bankruptcy petition by the licensee or being the subject of an involuntary bankruptcy petition.

1114 ANNUAL REPORTING REQUIREMENTS

1114.1 A mortgage lender, mortgage broker, and mortgage dual authority licensee shall submit an annual report to the Department on a form prescribed by the Commissioner.

A mortgage loan originator shall file annually, a call report with the Nationwide Mortgage Licensing System and Registry on a form prescribed by the Nationwide Mortgage Licensing System and Registry.

1115 ANNUAL ASSESSMENTS

1115.1 Each licensed mortgage lender, mortgage broker, or mortgage dual authority licensee filing an application to renew a license, shall be subject to an assessment as prescribed in Appendix A. The assessment shall be determined to be the sum of a fixed amount based on the license type plus a variable amount based on the number of loans originated, brokered, and serviced in the previous license period as prescribed in Appendix A.

1115.2 A licensee who has been charged and pays an annual assessment fee shall not be subject to an examination fee in the same year unless the following occurs:

(a) The Commissioner determines that an out-of-state examination is necessary; or

(b) The Commissioner determines that a special investigation is necessary.

1115.3 Any person who files an application, and was licensed by the Department as a mortgage broker, mortgage lender, or mortgage dual authority licensee during the one (1) year period preceding the filing of the application, shall be assessed the annual assessment, in addition to any fees required, as prescribed in Appendix A.

1116 MORTGAGE LOAN APPLICATION AND APPROVAL PROCESS

1116.1 Each application for a proposed mortgage loan must be signed and dated by each borrower on each page of the mortgage loan application and shall contain, or have attached to the application, at a minimum, the following information:

(a) The name, social security number, address, telephone number, and source of income of each borrower;

(b) The address and legal description, if available, of the real property that is being secured by the loan;

(c) The principal amount of the loan requested;

(d) The current income and current debt of each borrower as provided by each borrower;

(e) The current assets and current liabilities of each borrower as provided by each borrower;

(f) Disclosure as to whether the loan will refinance a prior loan secured by the same real property; and

(g) If the loan will refinance a prior loan secured by the same real property, the purpose of the refinancing, and the amount of the loan that is being refinanced.

1116.2 The following additional information shall be included in, or attached to, a mortgage loan application if available at the time of the application:

(a) The cost of the mortgage loan, including the annual percentage rate, interest rate, broker compensation, lender compensation, and finance charge;

(b) The date of maturity of the proposed loan;

(c) Disclosure as to whether the interest rate is fixed or variable;

(d) For proposed loans with a proposed variable rate of interest, disclosure of the index used for adjustments, limits on adjustments, and the adjustment period;

(e) Disclosure as to whether the loan may result in a balloon payment; and

(f) Non-conventional mortgage disclosure requirements as prescribed by the Act.

1116.3 If a mortgage loan application is approved and executed without the information in sections 1116.1 and 1116.2, the mortgage loan application shall be voidable by the borrower(s) prior to the loan closing and any fees submitted by the borrower(s) in connection with the application shall be returned to the borrower(s) in the event the borrower(s) voids the mortgage loan application.

1116.4 The current income, current debt, currents assets, current liabilities, employment, and other sources of revenue of each borrower shall be verified and documented in order to determine the borrower's ability to repay a loan secured by a residential lien instrument.

1116.5 A licensee shall demonstrate the preparation and use of an analysis of the borrower's ability to repay the loan and such analysis shall be retained in the loan file. The licensee shall act in good faith in the best interest of the borrower.

1116.6 A borrower may withdraw a mortgage loan application at anytime, with no penalty or fee, except for any reasonable application fee, prior to signing a financing agreement or written commitment.

1117 WRITTEN COMMITMENTS, FINANCING AGREEMENTS, AND LOCK-IN AGREEMENTS

1117.1 A written commitment shall include the following:

(a) If available, identification of the real property intended to secure the mortgage loan;

(b) The principal amount and maturity term of the mortgage loan;

(c) The interest rate and points for the mortgage loan if the commitment agreement is also a lock-in agreement, or a statement that the mortgage loan will be made at the mortgage lender's prevailing rate and points

for such loans at the time of closing or a specified number of days prior to closing;

(d) The amount of any commitment fee and the time within which the commitment fee must be paid;

(e) Disclosure as to whether funds will be escrowed and, if so, the purpose of the escrow;

(f) Disclosure as to whether private mortgage insurance or any other type of insurance is required;

(g) The length of the commitment period;

(h) A statement that if the mortgage loan is not closed, for any reason, within the commitment period, the mortgage lender is no longer obligated by the commitment agreement and any commitment fee paid shall be refunded to the borrower;

(i) A statement that the agreement is binding on both parties. The statement shall be disclosed in bold-faced type and at least a font size greater than the other language in the agreement; and

(j) Any other reasonable terms and conditions that the mortgage lender elects to disclose in the commitment agreement.

1117.2 A financing agreement containing the information required in section 14 of the Act may be submitted and executed by the mortgage lender and the borrower in lieu of a written commitment if the financing agreement is not subject to a future determination, change, or alteration, and the financing agreement meets the requirements of section 1117.1.

1117.3 A written commitment executed by the mortgage lender and the borrower pursuant to section 15(a)(8) of the Act may be submitted in lieu of a financing agreement if the written commitment contains the information required in section 14 of the Act and the information required in section 1117.1.

1117.4 The mortgage lender may enter into a lock-in agreement if the mortgage lender and each borrower execute the agreement, and the agreement contains the information required in section 1117.5.

1117.5 A lock-in agreement shall include the following:

(a) The interest rate and points for the mortgage loan, and if the rate is an adjustable rate, disclosure of the initial rate, the index used for

adjustments, limits on adjustments, and the adjustment period;

(b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;

(c) The length of the lock-in period;

(d) A statement that if the mortgage loan is not closed within the lock-in period, for any reason, the mortgage lender is no longer obligated by the lock-in agreement and any lock-in fee paid by the borrower shall be refunded;

(e) A statement that any terms not locked-in by the lock-in agreement are subject to change until the mortgage loan is closed at settlement; and

(f) Any other reasonable terms and conditions of the lock-in agreement required by the mortgage lender.

1117.6 A written commitment, financing agreement, or lock-in agreement executed pursuant to this section may be deemed voidable and unenforceable unless the agreement is signed by the borrower and contains the information required by this section.

1118 MORTGAGE LENDER AND MORTGAGE BROKER FEES

1118.1 For purposes of this section, a fee shall include the rate of interest, annual percentage rate, finance charge, points, yield spread premium, or any other monetary costs charged to a borrower, or paid on behalf of the borrower, for the origination, service, or brokering of a mortgage loan.

1118.2 A licensee shall charge fees that are reasonable and for services actually performed by the licensee or a third party providing services on behalf of the licensee.

1118.3 Unless otherwise stated, any fee charged shall be disclosed and charged in accordance with applicable District and federal law, including TILA and RESPA.

1119 APPRAISAL

1119.1 A mortgage loan originator, mortgage lender, a mortgage broker, or a mortgage dual authority licensee shall not use an appraisal conducted for real property located in the District of Columbia, which will be used to secure a mortgage loan, unless the appraisal was conducted by an appraiser that is licensed and authorized to conduct business in the District of Columbia.

1120 RECORDKEEPING

1120.1 For each mortgage loan brokered or originated, a licensee shall retain a file of all documents, invoices and/or other obligations for at least three (3) years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever first occurs. Such file shall contain at a minimum, the following:

(a) Mortgage loan application;

(b) Settlement statements or forms required to be executed or completed pursuant to RESPA;

(c) Forms or documents required to be executed or completed pursuant to TILA;

(d) Financing agreement;

(e) Non-conventional mortgage loan disclosure;

(f) Written commitment;

(g) Lock-in agreement, if applicable;

(h) Promissory note;

(i) Documents related to any litigation against or by the licensee;

(j) Copies of all printed or other advertising materials circulated by the licensee; and

(k) Any other document that the Department may require the licensee to maintain.

1120.2 In addition to the requirements of section 1120.1, a mortgage lender shall maintain the following, as applicable:

(a) A copy of the Deed of Trust;

(b) Lien release;

(c) Certification of satisfaction; and

(d) Any other document that the Department may require the mortgage lender to maintain.

1120.3 In addition to the requirements of section 1120.1, a mortgage broker shall maintain:

(a) A copy of the mortgage loan broker agreement containing the signature(s) of applicant(s);

(b) A copy of all invoices or other evidence of expenses incurred in connection with the mortgage loan including, but not limited to, the property appraisal, title certificate, and credit report;

(c) A record of all fees collected by the broker and copies of all receipts provided to the applicant(s) for amounts paid to the broker; and

(d) Any other document that the Department may require the broker to maintain.

1120.4 The licensee shall provide a copy of the documents listed in section 1120.1 to the borrower within ten (10) business days of execution or completion of the document unless federal law prescribes a different timeframe.

1121 ESCROW ACCOUNTS

1121.1 A borrower may elect not to make escrow payments to the mortgage lender when the borrower has made a down payment equaling twenty percent (20%) or more of the total purchase price of the property or has an equity interest in the property equal to, or greater than, twenty percent (20%) of the fair market value of the property.

1121.2 A mortgage lender may not impose a penalty or fee, including an increase in interest or other finance charges, when a borrower is not required, pursuant to section 16 of the Act, to make advance payments of real estate taxes or insurance premiums.

1122 APPLICABILITY OF FEDERAL LAW

1122.1 Unless otherwise stated in the Act, a licensee or person required to be licensed under the Act shall comply with applicable federal law and any rule, regulation, order, or interpretation promulgated or issued pursuant to the applicable federal law.

1123 EXAMINATIONS AND INVESTIGATIONS

1123.1 To defray the costs of examination, every mortgage lender, mortgage broker, and mortgage loan originator required to be licensed under this chapter shall be subject to an examination fee as prescribed in Appendix A.

1123.2 A licensee who has been charged and pays an examination fee, shall not be subject to an annual assessment fee in the same year unless the following occurs:

(a) The Commissioner determines that an out-of-state examination is necessary; or

(b) The Commissioner determines that a special investigation is necessary.

1123.3 The Commissioner may examine a licensee located outside the District of Columbia and charge the licensee for the cost of actual travel and housing expenses incurred to conduct the examination.

1124 COMPLAINTS

1124.1 Each licensee shall file with the Department a written notice designating a contact person to serve as the point of contact for complaints filed with the Department against the licensee. The notice shall include the designee's name, title, e-mail address, telephone number, and address.

1124.2 All complaints shall be filed with the Department, on a form prescribed by the Department, and in accordance with any procedures or processes adopted by the Department.

1124.3 The Commissioner may provide information on consumer complaints to the Nationwide Mortgage Licensing System and Registry, and other state and federal regulatory agencies.

1125 REVOCATION AND SUSPENSION OF LICENSE

1125.1 The Department, prior to taking any enforcement action pursuant to sections 18 and 19 of the Act against a person, including a licensee, shall issue and serve, by United States certified mail, return receipt requested, postage prepaid, on the person or the registered agent of the person, a notice of its intent to take enforcement action against the person.

1125.2 A notice of intent to take enforcement action shall include:

(a) The basis for the proposed action;

(b) The date by which the person shall file a written response with the Department;

(c) The date, time, and location of the hearing;

(d) Notice that the failure of the person to file a written response with the

Department to a notice of intent to take enforcement action within the specified time period shall constitute a waiver of a hearing and shall constitute a default; and

(e) The date by which the Department shall issue a final order taking the proposed enforcement action in the event the person fails to respond to the notice of intent to take enforcement action.

1125.3 The Department may issue a temporary order taking enforcement action against a person, without serving a prior notice of intent to take enforcement action pursuant to section 1125.1, if the Department determines that the person has engaged in conduct that is likely to cause one or more of the conditions as set forth in section 117(b) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.17(b) (2001)).

1125.4 A person shall file a written response to a notice of intent to take enforcement action or a temporary order within fifteen (15) days from the date of service of the notice of intent to take enforcement action or temporary order. The written response shall include:

(a) An explanation of why the proposed action or temporary order is not warranted; and

(b) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the person's position.

1125.5 The Department shall issue a final order within fifteen (15) days after the deadline upon which a response from the person was due or a hearing has been held.

1125.6 Unless otherwise required by the Act, a final order, temporary order, or any other type of enforcement action taken by the Department shall be issued or conducted in accordance with subchapter IV of the 2lst Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code §§ 26-551.13 through 551.21(2001)).

1125.7 The Commissioner may make public a notice of intent to take enforcement action, a final order, temporary order or any other type of enforcement action taken by the Department.

1125.8 All hearings held pursuant to this section shall be conducted pursuant to the Rules of Practice and Procedure for Hearings set out in Chapter 38 of Title 26 of the District of Columbia Municipal Regulations.

1126 ADMINISTRATIVE PENALTIES

1126.1 Any licensee that fails to file an annual report at the time prescribed by section 11 of the Act, shall be assessed a late penalty in the amount of one hundred dollars ($100) per business day following the date the annual report is due until the annual report is filed with the Department.

1126.2 Any licensee, or any person required to have a license under the Act, shall be assessed up to the maximum penalties upon a violation of the Act as follows:

(a) Five thousand dollars ($5000) for each occurrence of each violation of the Act if the person committing the violation is licensed by the Department, and the licensee has no more than one (1) violation of the Act during the current license period;

(b) Twenty-five thousand dollars ($25,000) for each occurrence of each violation of the Act if the person committing the violation is not licensed by the Department.

1126.3 The Commissioner, in his or her discretion, may reduce the penalty imposed by section 1126.2 above upon good cause shown, in writing, by the person against whom the penalty would be imposed.

1199 DEFINITIONS

1199.1 For the purpose of this chapter, the following terms have the meaning ascribed:

Applicant - a person filing an application for a license, a renewal license, or a change in control under the Act, for an individual office location.

Commissioner - the Commissioner of the Department of Insurance, Securities and Banking.

Department - the Department of Insurance, Securities and Banking.

Fair Credit Reporting Act – 15 USC §§ 1681 *et seq*. and implementing rules and regulations.

Lock-in agreement - an agreement that guarantees an interest rate during a specified period.

Mortgage Dual Authority licensee – a licensee with both a mortgage lender and a mortgage broker license.

Mortgage Servicer - a person who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

RESPA - the Real Estate Settlement Procedures Act *(12 USC §§ 2601* et seq.) and implementing rules and regulations.

TILA - the Truth In Lending Act *(15 USC §§ 1601* et seq.) and implementing rules and regulations.

Appendix A

Department of Insurance, Securities, and Banking (DISB)
Mortgage Lender, Mortgage Broker, Mortgage Loan Originator Fee Schedule
Including Nationwide Mortgage Licensing System and Registry (NMLSR) Fee Requirements

DISB - Mortgage Licensing, Assessment and Examination Fees

	Mortgage Loan Originator License	**Mortgage Broker License**	**Mortgage Lender License**	**Mortgage Dual Authority License**
DISB Initial Application Fee	$300 + NMLSR Fee	$1,100 + NMLSR Fee	$1,200 + NMLSR Fee	$1,300 + NMLSR Fee
DISB Renewal Application Fee	$300 + NMLSR Fee	$900 + NMLSR Fee	$1,000 + NMLSR Fee	$1,200 + NMLSR Fee
DISB Amendment Fee	$100.00	$100.00	$100.00	$100.00
DISB Late Fee	$300.00	$300.00	$300.00	$300.00
DISB Acquisition of Control Fee		$500.00	$500.00	$500.00
DISB Annual Assessment Fee		$400 + $6.60 per loan	$800 + $6.60 per loan	$1,200 + $6.60 per loan
DISB Examination Fee	$400 per examiner day	$400 per examiner day	$400 per examiner day	$400 per examiner day

All persons desiring to comment on the subject matter of this proposed rulemaking shall file comments in writing, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be filed with Howard Amer, Associate Commissioner of Banking, Department of Insurance, Securities and Banking, 810 1st Street, NE, 7th Floor, Washington, D.C. 20002. Comments may also be sent electronically to howard.amer@dc.gov. Copies of the proposed rulemaking are available by writing to the above address. Copies of the proposed rulemaking also may be obtained from the Department at the same address during the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No.3

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to its authority under D.C. Official Code § 2-505,[1] hereby gives notice of its intent to act upon the proposed tariff of Washington Gas Light Company ("WGL")[2] in not less than thirty (30) days after the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The Rights-of-Way ("ROW") Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. On March 26, 2009, pursuant to D.C. Official Code Section 10-1141.06,[3] WGL filed a tariff application to update the ROW Current Factor.[4] In the proposed tariff, WGL sets forth the process used to recover from its customers the D.C. ROW fees paid by WGL to the District of Columbia government. Specifically, WGL proposes to amend the following page:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Section 22
4th Revised Page 56

3. WGL's Tariff Application shows that the ROW Current Factor is 0.0306 with the ROW Reconciliation Factor of 0.0004 for the prior period, which yields a net factor of 0.0310.[5] WGL asserts that its proposed tariff amendment will become effective commencing with the April 2009 billing cycle.[6]

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1 D.C. Official Code § 2-505 (2001 Ed.).

2 *GT00-2, In The Matter Of Washington Gas Light Company's Rights-Of-Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3*, ("*GT00-2*") Rights of Way Current Factor Surcharge Filing of Washington Gas Light Company, ("Tariff Application"), filed March 26, 2009.

3 D.C. OFFICIAL CODE § 10-1141.06 (2001 Ed.) stating that "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

4 *GT00-2*, Tariff Application at 1.

5 *GT00-2*, Tariff Application at 2; See also Order No. 15049, rel. August 25, 2008, where the Commission approved the Reconciliation Factor.

6 *GT00-2*, Tariff Application at 2.

4. The proposed tariff amendment may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's website at www.dcpsc.org. Copies of the tariff are available upon request, at a per-page reproduction cost.

5. All persons interested in commenting on the proposed tariff must submit written comments to Dorothy Wideman, Commission Secretary, at 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005. Comments must be received no later than thirty (30) days after the date of publication of this NOPR in the *D.C. Register*. Persons who wish to file reply comments may do so no later than forty-five (45) days after the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action. The Commission does not intend to prevent WGL from implementing its filed surcharges. However, if the Commission discovers any inaccuracies, WGL may be subject to reconciliation of the surcharges.

WASHINGTON CONVENTION CENTER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the Washington Convention Center Authority, pursuant to section 203 of the Washington Convention Center Authority Act of 1994, D.C. Law 10-188, D.C. Code § 10-1201.03 as amended, hereby gives notice of its intent to adopt the following amendment to Chapters 1 and 3 of Title 19 of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the *District of Columbia Register*.

The proposed rulemaking would require the Authority's Board of Directors to approve, by resolution, the award of any multiyear contract or contract that exceeds $1 million before such a contract is submitted to the District of Columbia Council for approval as required by D.C. Code § 2-301.5a.

Chapter 1 of Title 19 of the District of Columbia Municipal Regulations is amended as follows:

CHAPTER 1. WASHINGTON CONVENTION CENTER AUTHORITY: BY LAWS

* * *

114. Approval of Certain Contracts.

* * *

114.1 Before the Authority awards any contract that requires the approval of the District of Columbia Council in accordance with D.C. Code § 2-301.05a, and prior to the submission of any such contract to the Council, the Board shall first approve the contract by a resolution passed by a majority of the Members.

* * *

Chapter 3 of Title 19 of the District of Columbia Municipal Regulations is amended as follows:

CHAPTER 3. WASHINGTON CONVENTION CENTER AUTHORITY: PROCUREMENT

300. General Requirements: Procurement Authority.

* * *

300.7 No contract requiring the submission to, and approval by, the District of Columbia Council

in accordance with D.C. Code § 2-301.05a shall be awarded unless first approved by a majority of the Board by resolution prior to submission to the Council.

* * *

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*. Comments should be filed with the General Manager, Washington Convention Center Authority, Walter E. Washington Convention Center, 801 Mount Vernon Place, N.W., Washington, DC 20001. Copies of this Notice of Proposed Rulemaking may be obtained by writing to the foregoing address.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in Section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Code §§ 34-2202.03(3), (11) and 34-2202.16, Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 2-505(a), and in accordance with 21 District of Columbia Municipal Regulations (DCMR) Chapter 40, hereby gives notice of its intention to amend Title 21 DCMR Water and Sanitation Regulations, Chapter 41, Retail Water and Sewer Rates, Section 4100 Rates for Water Service and 4101 Rates for Sewer Service, and Chapter 1, Water Supply, Section 112 Fees.

The Board expressed its intention to amend the DCMR at its regularly scheduled Board meeting held January 8, 2009 pursuant to Board Resolution # 09-25. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to, Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, or email Lmanley@dcwasa.com. Copies of these proposed rules may be obtained from the Authority at the same address.

In addition, the Board will also receive comments on these proposed rates at a public hearing to be held on Wednesday, June 10, 2009. The public hearing notice is published in this edition of the District of Columbia Register.

I. Timing of Final Action on Proposed Rulemaking

No final action will be taken on the Rulemaking Proposal described in this notice until after each of the following events has occurred:

1. A public hearing is held to receive comments on the proposed rulemaking.

2. The public comment period on this rulemaking expires; and

3. The Board of Directors takes final action after public comments are considered.

II. Rulemaking Proposal

The following rulemaking action is proposed:

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4100 RATES FOR WATER SERVICE, Subsection 4100.3 is amended to read as follows:

4100 RATES FOR WATER SERVICE

4100.3 The retail rate for metered water service shall be:

(a) Effective October 1, 2009, increased from Two Dollars and Thirty Cents ($2.30) to Two Dollars and Fifty-Three Cents ($2.53) for each One Hundred Cubic Feet of water used.

Title 21 DCMR, CHAPTER 41 RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE, Subsection 4101.1 is amended to read as follows:

4101 RATES FOR SEWER SERVICE

4101.1 The retail rates for sanitary sewer service shall be:

(a) Effective October 1, 2009, the retail sanitary sewer service rate shall be increased from Three Dollars and Thirty-One Cents ($3.31) to Three Dollars and Sixty-Three Cents ($3.63) for each One Hundred Cubic Feet ("Ccf") of water used; and

(b) Effective October 1, 2009, the Impervious Surface Area Charge shall be increased from One Dollar and Twenty-Four Cents ($1.24) to Two Dollars and Twenty Cents ($2.20) per month per Equivalent Residential Unit (ERU).

Title 21 DCMR, Chapter 1 WATER SUPPLY, Section 112 FEES, Subsection 112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE is amended to read as follows:

112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE / PILOT FEE - The Right of Way Occupancy Fee Pass Through Charge / Pilot Fee, assessed to recover the cost of fees charged by the District of Columbia to the Water and Sewer Authority for use of District of Columbia public space and rights of ways, shall be as follows:

(a) Effective October 1, 2009, the Right of Way Occupancy Fee Pass Through Charge / Pilot Fee shall be increased from Fifty-Two Cents ($0.052) to Fifty-Seven Cents ($0.57) for each One Hundred Cubic Feet ("Ccf") of water used, divided as follows:

(1) Payment in Lieu of Taxes, Forty-Three Cents ($0.43) per Ccf; and

(2) District of Columbia Right of Way Fee, Fourteen Cents ($0.14) per Ccf.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority ("Authority"), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, as amended (D.C. Law 11-111, §§ 203(3), (5), and (6) and 205(a)(3) and (7); D.C. Code §§ 34-2202.03(3), (5), and (6) and 34-2202.05(a)(3) and (7)), and Board Resolution # 09-47 adopted at its regular meeting held on April 2, 2009, hereby gives notice of its intent to adopt the following amendment to Title 21 of the District of Columbia Municipal Regulations (DCMR) Chapter 53, Water and Sanitation, District of Columbia Water and Sewer Authority Procurement Regulations and replace the current regulations with new regulations. The proposed rules amend and supersede the existing Procurement Regulations, located at 21 DCMR Chapter 53.

If adopted these rules will replace the existing procurement regulations. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Linda R. Manley, Secretary to the Board of Directors, 5000 Overlook Ave., S.W., Washington, D.C. 20032, or email Lmanley@dcwasa.com. Copies of these proposed rules may be obtained from the Authority at the same address.

21 DCMR Chapter 53, District of Columbia Water and Sewer Authority Procurement Regulations, is deleted in its entirety and replaced with the following new Chapter 53 to read as follows:

CHAPTER 53 DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY PROCUREMENT REGULATIONS

Sections

5300 Purpose and Governance

5300.1 The District of Columbia Water and Sewer Authority Procurement Regulations (the "Regulations") are issued by the Board of Directors (the "Board") of the District of Columbia Water and Sewer Authority (the "Authority") pursuant to the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," effective April 18, 1996 (D. C. Law 11-111; D.C. Code § 34-2201.01 *et seq.*), (the "Enabling Act"), to establish regulations for the procurement of goods and services, including construction.

5301 General Provisions

5301.2 The Regulations shall govern the procurement of goods and services, including construction.

5301.3 In conformity with its statutory mandate, the Authority reserves the right, at any time and in its sole discretion, to modify, rescind, delete, or otherwise change the provisions of the Regulations.

5301.4 The General Manager shall issue a District of Columbia Water and Sewer Authority ("DC WASA") Procurement Manual setting forth guidelines and procedures to be followed consistent with these Regulations.

5301.5 The Board delegates to the General Manager the authority to develop, implement and enforce such policies and procedures, consistent with these Regulations, as deemed necessary or useful.

5301.6 The General Manager is responsible for recommending to the Board new procurement regulations or modifications to existing procurement regulations.

5301.7 If any provision in this chapter is deemed invalid, void or unenforceable by a court of competent jurisdiction, the chapter shall be construed as though the provision does not appear. Any such finding by a court of competent jurisdiction shall not affect the validity of any other provision, section, paragraph, or sentence of this chapter.

5302 Full and Open Competition

5302.1 Procurements shall be conducted using full and open competition, except as otherwise provided for in these Regulations.

5303 Applicability

5303.1 The Regulations apply to all procurements made by the Authority. In the case of a procurement funded with federal, state or local funds, the Regulations shall be applied to conform to the requirements of the funding source, except to the extent

that doing so would prevent compliance with the terms and conditions of other applicable federal, state, or local laws.

5304 General Standards of Ethical Conduct

5304.1 Authority employees involved in the procurement process shall conduct business impartially and in a manner above reproach, with preferential treatment for none. Authority employees shall strictly avoid any conflict of interest or the appearance of a conflict of interest in the procurement process.

5304.2 Any attempt by an employee, officer or agent to realize personal gain through employment with the Authority by conduct inconsistent with proper discharge of duties is a breach of ethical standards.

5304.3 Any attempt by a non-employee to influence any Authority employee to breach the standards of ethical conduct set forth in this Section is a breach of ethical standards.

5304.4 Any attempt by a Board member or alternate member to realize personal gain through the exercise of the duties or responsibilities of Board members or to influence any employee to violate the standards of ethical conduct set forth in this Section is a breach of ethical standards.

5305 Ethics Sanctions

5305.1 The Authority may take action against employees, officers and agents as well as others who violate any provision of §§ 5304-5308.

5305.2 Any employee, officer or agent who violates any provision of §§ 5304-5308 will be subject to discipline, up to and including termination of the relationship with the Authority.

5305.3 Any Board member or alternate member who violates any provision of §§ 5304-5308 will be subject to removal, suspension or termination in accordance with applicable law.

5305.4 Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence an employee to breach the ethical standards set forth in §§ 5304-5308 is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution.

5305.5 A violation by a contractor or subcontractor of any provision of §§ 5304-5308 constitutes a major breach of each Authority contract or subcontract to which the violator is a party. Additionally, the Authority may determine an offeror or contractor to be non-responsible, or may suspend or debar any offeror or contractor who violates or whose representative violates any provision of

§§ 5304-5308.

5306 Conflict of Interest

5306.1 No Authority employee, officer, board member or agent shall participate in or attempt to influence any procurement when the employee, officer, board member or agent knows or has reason to know:

(a) The employee, officer, board member or agent, or any relative of an employee, officer, board member or agent has a financial interest pertaining to the procurement;

(b) A business or organization in which the employee, officer, board member or agent, or any relative of an employee, officer, board member or agent has a financial interest pertaining to the procurement; or

(c) The employee, officer, board member or agent or any relative of an employee, officer, board member or agent has an agreement or arrangement for prospective employment with a business or organization involved with the procurement.

5306.2 It is a breach of ethical standards for any employee to receive or attempt to realize personal gain or advantage, either directly or indirectly, as a result of their participation in any action related to any procurement. No employee, officer, board member or agent may solicit or accept, directly or indirectly, on his/her own behalf or on behalf of a relative, any benefit, such as a gift, gratuity, favor, compensation, offer of employment, or anything having more than a nominal monetary value from any person, or entity having or seeking to have a contractual, business, or financial relationship with the Authority.

5306.3 In the event an Authority employee, officer or agent, other than the General Manager, is offered or receives any benefit in violation of any provision of §§ 5304-5308 from any person or entity, the employee shall report the matter to the General Manager or designee who shall determine the disposition of the benefit. The failure to report such offer or benefit to the General Manager or designee is a breach of these ethical standards.

5306.4 In the event the General Manager, a Board member other than the Board Chair, or an alternate member receives any offer or benefit in violation of any provision of §§ 5304-5308 from any person or entity, the Board member, alternate member or General Manager shall report the benefit to the Board Chair who shall determine the disposition of the matter or benefit. In the event that the Board Chair receives any offer or benefit in violation of any provision of §§ 5304-5308 from any person or entity, the Board Chair shall report the benefit to the Vice Chair who shall determine the disposition of the matter or benefit.

5307 Restrictions on Employment of Present and Former Employees

5307.1 An Authority employee who participates in the selection of a contractor or participates in the approval process of a contract or contract modification or supervises contract implementation shall not be employed by the contractor in question with respect to the performance of the contract in which the Authority employee participated.

5307.2 An offeror, contractor or subcontractor shall not:

(a) Employ for a period of eighteen (18) months after separation an Authority employee to work on an Authority project on which the employee directly worked. The General Manager may reduce this limitation period if it is determined that it is in the best interests of the Authority after review and recommendation by the General Counsel.

(b) At any time after granting employment to any Authority employee who participated in the selection of the contractor or in the approval of a contract or contract modification with the contractor or the supervision of the contract implementation, allow such employee to work under the Authority contract resulting from the selection or approval;

(c) Offer to perform work for the Authority premised on the hiring of an Authority employee to perform part of the work who may reasonably be expected to participate in the selection of that contractor, in the approval of a contract or contract modification with that contractor, or the supervision of contract implementation;

(d) Perform work for the Authority under the supervision, direction or review of an Authority employee who was formerly employed by the contractor without notifying the Contracting Officer in writing;

(e) Allow the relative of an Authority employee to work on an Authority project for which the employee has any direct responsibility or supervision;

(f) Permit any person whose employment by the Authority was terminated by the Authority, other than pursuant to a reduction in force, to work on any Authority contract or project; or

(g) Offer or grant to an Authority employee, officer, or agent or the relative of an Authority employee, officer, or agent directly or indirectly, any benefit such as a gift, gratuity, favor, compensation, offer of employment, or any other thing having more than nominal monetary value.

5308 Organizational Conflict Of Interest

5308.1 An organizational conflict of interest exists when an offeror or a contractor (prime contractor or subcontractor) has:

(a) An unfair competitive advantage in a procurement as the result of access to nonpublic information about the procurement or a competing bidder; or

(b) An incentive that renders it unable, or potentially unable, to provide impartial assistance or advice to the Authority.

5308.2 In an effort to ensure a fair procurement process and protect the interest of the Authority, a Contracting Officer will analyze a planned procurement to identify actual or potential organizational conflicts of interest as early as possible in the procurement process and determine if an actual or potential organizational conflict of interest can be effectively avoided or mitigated.

5308.3 A Contracting Officer may reject a bid or proposal if an organizational conflict of interest has not been eliminated, avoided or mitigated to the satisfaction of the Authority.

5309 [RESERVED]

5310 Contracting Authority and Responsibilities

5310.1 The Authority's Board, pursuant to D.C. Code §§ 34-2202.03(5), (6) and 2202.05(7), has the authority and responsibility to contract for goods and services including construction.

5310.2 The Board may establish contracting activities and delegate broad authority to manage the Authority's contracting functions.

5310.3 The Board delegates to the General Manager the authority, in compliance with these Regulations, to contract for goods and services, including construction, required by the Authority for its operations.

5311 General Manager

5311.1 The General Manager is designated as the Chief Contracting Officer for the Authority. The General Manager is authorized to enter into, administer, terminate and otherwise manage contracts subject to any approval thresholds that may be established by the Board.

5311.2 The General Manager shall determine the qualifications of Contracting Officers and may delegate contracting authority in whole or in part to one or more other Contracting Officers. Such delegation shall be in writing specifying the limits of

the authority granted.

5312 Contracting Officers

5312.1 Contracting Officers have only such authority as delegated to them pursuant to § 5311.2.

5312.2 Contracting Officers have discretion to determine the method of procurement, project delivery and type of contract to use for each requirement, unless this function is excluded from the delegation of the contracting authority.

5312.3 Contracting Officers shall determine responsive bids and responsible offerors. A responsive bid is a response to a solicitation which conforms in all material respects to the solicitation.

5313.4 A responsible offeror has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

5313 Contracting Officer's Technical Representative

5313.1 Contracting Officers may appoint in writing a Contracting Officer's Technical Representative ("COTR") to provide such management oversight and technical direction for a particular procurement or contract as the Contracting Officer shall determine is necessary or useful.

5313.2 The COTR shall maintain an arm's length relationship with the contractor. COTRs have no authority to modify any contract.

5314 Ethics Officer

5314.1 The General Manager shall designate an Ethics Officer for the Authority to provide guidance on ethical matters.

5315-5319 [RESERVED]

5320 Contractor Debarment and Suspensions

5320.1 The Authority has the authority to suspend or debar contractors for cause.

5321-5329 [RESERVED]

5330 Methods of Procurement

5330.1 Authority procurements shall be conducted using a method or combination of methods, which:

(a) Serve the Authority's interest considering price, delivery, quality, effect on the Authority's operation and services, and other factors affecting the Authority's interests; and

(b) Deal fairly with offerors and contractors.

5330.2 The Authority may use any of the following methods of procurement:

(a) Sealed Bids;

(b) Competitive Proposals;

(c) Small Purchases;

(d) Commercial Item Purchases;

(e) Expedited Purchases;

(f) Limited Competition Purchases;

(g) Joint Procurements;

(h) Rider Procurements;

(i) General Services Administration Schedule Purchases;

(j) Micro-Purchases; or

(k) Unsolicited Proposals.

5331 Competitive Procurement Methods

5331.1 The sealed bid method includes publicizing the solicitation, issuing an Invitation for Bids ("IFB"), and the receipt of bids. The Authority may award a contract to the responsible bidder who submits the lowest responsive bid. The sealed bid method may be used if:

(a) There is an adequate and realistic specification or purchase description available;

(b) The award will be made on the basis of price and other price-related factors;

(c) It is not necessary to conduct discussions with the responding offerors about their bids; and

(d) There is a reasonable expectation of receiving more than one sealed bid.

5331.2 The competitive proposal method includes both one-step and two-step proposal processes.

(a) The one-step process entails:

(1) The publicizing of the solicitation;

(2) The issuance of a Request for Proposals ("RFP"); and

(3) The receipt of proposals.

(b) The two-step process entails:

(1) The publicizing of the solicitation;

(2) The issuance of a Request for Qualifications ("RFQ");

(3) The receipt of Statements of Qualifications from interested offerors;

(4) The issuance of an RFP to a shortlist of offerors that have responded to the RFQ and are deemed most qualified; and

(5) The receipt of proposals.

(c) Under either process, the Authority may negotiate with offerors and seek revised offers. This procurement method may include a Request for Information or an Expression of Interest before the RFP or RFQ is publicized.

(d) In competitive proposal procurement, the Authority may award a contract to the offeror whose proposal is most advantageous to the Authority.

(e) The competitive proposal method may be used when time permits the solicitation, submission, and evaluation of proposals in one or more steps and one or more of the following circumstances apply:

(1) There is not a complete, adequate, and realistic specification or purchase description available;

(2) The award will be made on the basis of criteria in addition to price or price-related factors;

(3) It may be necessary to conduct discussions with the responding offerors about their proposals; or

(4) There is a reasonable expectation of receiving more than one Statement of Qualifications and/or proposal.

5331.3 All architectural and engineering ("A/E") services that are required to be performed by licensed, registered or certified professionals shall be procured on the basis of demonstrated competence and qualifications. After the A/E offeror has been selected, price shall be discussed. The Authority shall exclude an offeror from consideration if the parties cannot agree on a fair and reasonable price. This subsection shall not apply in the procurement of design-build services, or for any project delivery method in which the anticipated cost of A/E services is less than fifty percent (50%) of the anticipated cost of the project as a whole.

5331.4 The Authority may use multistep methods of procurement including, but not limited to, any combination of competitive methods such as the two-step sealed bidding and the advisory multi-step methods.

5331.5 The small purchases method is used for procurements with an estimated value less than the threshold established in the DC WASA Procurement Manual. Small purchases may be made considering price and the best interests of the Authority after seeking quotations from at least two sources.

5331.6 The small purchases method may be used for any purchases of commercial items.

5331.7 The small purchases method may be used for any purchases when time is of the essence (expedited purchases). Offers shall be sought from two or more sources and purchases may be made considering price and other factors.

5331.8 Competition may be limited to selected sources when it is determined that there are limited sources of supply to fulfill the Authority's requirements.

5331.9 The Authority may use the following procurement methods with other agencies:

(a) Joint Procurement: The Authority may participate in, sponsor, conduct, or administer a joint procurement agreement with one or more public bodies to increase efficiency or reduce administrative expenses.

(b) Rider Procurements: The Authority may purchase goods and services including construction if:

(1) A public body has entered into a contract for goods or services including construction according to general principles of competitive procurement; and

(2) The Authority is named or otherwise described in the list of agencies that may purchase under the contract.

(c) General Services Administration Schedule Purchases: The Authority may purchase goods or services including construction under schedule contracts awarded by the General Services Administration.

5332 Exemptions

5332.1 The following procurements may be made without competition and are not subject to the competitive requirements set forth in § 5331.

5332.2 Micro-purchases: Procurements at or under the threshold for micro-purchases established in the DC WASA Procurement Manual may be made without competition.

5332.3 Sole Source: Goods and services, including construction, that are available from only one vendor or contractor (sole source) may be purchased without competition. Circumstances where sole source purchasing is permitted include, but are not limited to:

(a) Specific replacement parts or components for equipment;

(b) Equipment upgrade and repair, repair services, or parts unavailable from any other source except the original equipment manufacturer or its designated service representative;

(c) Upgrade to existing software, available only from the producer of the software who sells only on a direct basis;

(d) When there is a need to standardize equipment, or to facilitate the interoperability of equipment or systems;

(e) When there is substantial duplication of costs to the Authority that is not expected to be recovered through competition;

(f) Utility services, when from only one source; or

(g) Intellectual property rights that are owned or controlled by one source and made available through that source. These rights would include patents, copyrights, licenses, secret processes, material monopolies or other established rights that affect distribution of goods and services.

5332.4 Categorical Exemptions: The following categories of purchases are exempt from the competitive procurement methods and may be purchased without competition:

(a) Purchase, rent or lease of land or other interest in real property;

(b) Memberships, films, manuscripts, publications, educational services;

(c) Personal property sold at an auction by a licensed auctioneer;

(d) Personal property or services provided by another public entity, agency or Authority;

(e) Legal services;

(f) Research programs;

(g) Advertisements in newspapers or other publications;

(h) Intergovernmental agreements and cooperative agreements with other institutions where the primary purpose is not the purchase of goods, services or construction; and

(i) Travel services.

5332.5 Emergency Procurements: Emergency Procurements may be made without competition. An emergency is a situation which creates an immediate need for goods or services, including construction, that cannot be met through normal procurement methods because the lack of these goods or services or construction would seriously threaten any of the following:

(a) The health or safety of any person;

(b) The preservation or protection of property;

(c) The continuation of necessary governmental functions; or

(d) The Authority's compliance with legal requirements.

5332.6 The General Manager, or designee may approve a non-competitive procurement on an emergency basis which does not otherwise comply with the requirements of the Regulations if the procurement is essential for:

(a) Preventing or avoiding an imminent emergency; or

(b) Responding to, mitigating or resolving an existing emergency condition.

5332.7 In case of an emergency procurement under this Section, a contractor may be given a verbal authorization by the Contracting Officer to proceed, provided that a written contract or modification is executed as soon thereafter as is reasonably practicable.

5333 Unsolicited Proposals

5333.1 The Authority will review unsolicited proposals and consider the feasibility of their implementation. An unsolicited proposal is one which:

(a) Is innovative or unique;

(b) Is independently originated and developed by the offeror;

(c) Is prepared without the Authority's supervision;

(d) Includes sufficient detail to permit a determination that the proposed product, services or work could benefit Authority's mission or allow it to meet its responsibilities; and

(e) Is not an advance proposal for a known or anticipated Authority requirement that can be procured by competitive methods.

5333.2 Unsolicited proposals may be the basis of a competitive procurement if deemed to be in the best interest of the Authority.

5333.3 An offeror may designate portions of its proposal to be confidential if they include proprietary information or contain sensitive personnel information.

5333.4 An unsolicited proposal shall be returned to an offeror, citing reasons, when the proposal:

(a) Does not meet the criteria in § 5333.1; or

(b) Is not deemed to be advantageous to the Authority.

5333.4 Acceptance of an unsolicited proposal may be recommended to the General Manager, who may accept it or reject it.

5334 Requests Before Soliciting Offers

5334.1 Prior to publicizing a solicitation of offers, the Authority may, when applicable and in consideration of its best interests, publicize and issue Requests for Information or an Expression of Interest.

5334.2 The Authority may publicize the solicitation and issue Requests for Qualifications from prospective offerors before soliciting offers under any method of procurement. In such case, the Authority may limit its solicitation of offers only to firms that submit a response or only to those firms that submit a response and are deemed most qualified.

5334.3 If the IFB or RFP is issued only to selected firms, further publicizing the IFB or RFP is not required.

5335 Dividing Procurements Prohibited

5335.1 Procurements shall not be divided as a means to circumvent the competitive process, or to avoid the procedures applicable to procurements of greater value.

5336-5339 [RESERVED]

5340 Contract Types and Project Delivery Methods

5340.1 Contracts may be of any type or combination of types except as prohibited in § 5340.3. All contracts, except as provided in § 5332.7 for emergencies, shall be in writing.

5340.2 Each solicitation shall clearly indicate the type or types of contract that will be used for the specific procurement.

5340.3 The use of cost plus a percentage of cost contracts is prohibited.

5341 Project Delivery Methods

5341.1 The Authority may select and employ a project delivery method determined to be appropriate to the specific contract and to serve the Authority's interests.

5342-5349 [RESERVED]

5350 Protests

5350.1 The procedures in §§ 5351 through 5353 shall govern protests.

5351 Filing

5351.1 An offeror protesting an award decision is required to file the protest with the Contracting Officer within five (5) calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. Only bidders/proposers may file a protest.

5351.2 Protests against issues other than an award decision, including protests directed to the terms, conditions, or form of a proposed procurement action, shall be received by the Authority through delivery of the written protest to the Contracting Officer not later than ten (10) calendar days prior to the date established for opening of bids or receipt of proposals, except that an initial protest that arises under an amendment to a solicitation or invitation to bid shall be filed up to four (4) calendar days after the date the amendment was issued but in no case after the

time established for opening of bids or receipt of proposals. Such protests may be filed by any potential offeror.

5352 Process

5352.1 Solicitations issued by the Authority shall inform prospective offerors of the applicable protest and appeal process. For all other Authority procurement actions, the applicable protest and appeal process will be specified in the DC WASA Procurement Manual.

5353 Continuation

5353.1 During resolution of a protest, all procurement activities and, where applicable, contractor performance, shall continue unless the Contracting Officer determines there is a reason to suspend or delay all or part of the procurement activities and/or contractor performance.

5354-5359 [RESERVED]

5360 Mandatory Contract Clauses

5360.1 All Authority purchase contracts above the level of small purchases shall include clauses for “Changes”, “Termination for Convenience” and “Termination for Default”, in addition to clauses and provisions applicable to the type of solicitation or contract.

5361-5369 [RESERVED]

5370 Business Development Programs

5370.1 The Authority will employ reasonable efforts to increase the opportunity for participation of eligible local and small business enterprises in its contracting and procurement activities.

5370.2 Pursuant to the requirements applicable to the receipt of federal grants and other financial assistance, the Authority will implement programs designed to increase participation by federally-designated business enterprises.

5370.3 A Business Development Plan implementing these programs will be submitted by the General Manager for approval by the Board.

5371-5379 [RESERVED]

5380 Protecting the Environment

5380.1 It is a fundamental principle of the Authority that it will respect and manage our

finite natural resources. Accordingly, the Authority will plan and conduct its procurement as an environmental steward. The Authority recognizes that how it carries out its environmental stewardship will have effects on a regional and global scale.

5381-5398 [RESERVED]

5399 Definitions

5399.1 When used in the Regulations, the following words and phrases shall have the meanings ascribed:

Bid – An offer to furnish goods and services including construction in conformity with and in response to specifications, delivery terms and conditions, and other requirements included in an Invitation For Bids (IFB).

Commercial Items – Items sold to the general public in the course of normal business operations that are competitively priced and based on established catalogue or market prices. Commercial products may include corresponding services for the installation, repair or maintenance associated with the item.

Contracting Officer – The General Manager and any other employee designated by the General Manager, possessing written and express authority to bind the Authority in specified contract matters.

Contracting Officer's Technical Representative (COTR) – An employee appointed in writing by a Contracting Officer to perform specified technical and administrative functions as are detailed in the appointment.

Construction – Activity that involves the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. This activity is distinguished from manufacturing, furnishing of goods, or services and maintenance work. Construction does not include work from which the final product is exclusively personal property.

Ethics – Practices or requirements pertaining to appropriate conduct or motives that conform to professional standards of conduct.

Expression of Interest – A process used to identify potential offerors that might be interested in an upcoming procurement, and/or invite comment from companies with expertise and experience in the matter that will benefit the development of the specifications or statement of work.

Full and Open Competition – A manner of conducting procurements in which all responsible sources are permitted to compete.

Goods – Physical (tangible) products, including but not limited to, supplies, equipment,

materials, printing, information technology hardware and software, and commodities.

Intergovernmental Agreement – An agreement by two or more public bodies, by memorandum of understanding, memorandum of agreement, contract or agreement, to exercise any powers that at least one of the parties possesses, provided that the primary purpose of the agreement is not the purchase of goods, services or construction.

Invitation for Bids (IFB) – The solicitation document used for competitive sealed bidding for the purchase of goods, services and construction.

Offeror – A person or entity that submits a bid or proposal to the Authority, generally in response to an IFB or RFP.

Procurement – The process by which the Authority acquires goods and services including construction, by and for its use through purchase or lease. Procurement begins at the point when Authority determines that an established need shall be met through contracting and includes the description of requirements to satisfy Authority needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling Authority needs by contract.

Project Delivery Method – The contracting approach selected to allocate risk and responsibility between a contractor and the Authority and to organize the contractor's work in connection with services, design, construction, operation, maintenance or supply. The Contracting Officer shall determine the appropriate project delivery method and may select any that best serves the Authority's interests, including but not limited to: design-bid-build; agency construction management; at-risk construction management; design-build; design-build-operate-transfer; design-build-operate-maintain; design-build-finance-operate; outsourcing; and public/private partnerships.

Proposal – An offer to furnish goods or services, including construction, in response to a Request for Proposals (RFP) that, if accepted, would bind the offeror to perform the resultant contract.

Protest – A written, timely objection to a solicitation or contract award submitted by a prospective or actual bidder/proposer whose direct economic interest would be affected by the award or failure to award a contract.

Public Body – Any state, the District of Columbia, any unit or political subdivision or component of any of the foregoing and any agency of the United States Government.

Relative – A spouse, parent, parent-in-law, child, step-child, sister, brother, brother-in-law, sister-in-law, step-parent, daughter-in-law, son-in-law, niece, nephew, first cousin, grandparent or grandchild, or any other related or unrelated individual that resides in the same household as the employee, officer, board member or agent.

Request for Information (RFI) – A process preliminary to a solicitation requesting information from potential vendors of goods or services, including construction, about their products and services.

Request for Proposals (RFP) – The solicitation document used in the competitive proposal process in which proposals are evaluated on the basis of technical standards, price and other criteria and in which negotiations with proposers prior to final selection and award of a contract is permissible.

Request for Qualifications (RFQ) – The solicitation document used to obtain Statements of Qualifications from prospective offerors in advance of the issuance of an Invitation for Bids or a Request for Proposals.

Services – Any activity that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish goods. Insurance is a service. Services also include consultation, advice, design and other work performed by either professional or non-professional personnel whether on an individual or organizational basis. This term shall not include employment agreements or collective bargaining agreements.

Solicitation – Any request to submit qualifications, expressions of interest, bids, proposals, or quotations to the Authority. A Solicitation under sealed bid procedures is called "Invitations for Bids." A Solicitation under competitive proposal procedures is called a "Request for Proposals" under one-step procurement, and is called "Request for Qualifications" and "Request for Proposals" under a two-step procurement. Small purchase solicitations may require submission of either a quotation or an offer (bid or proposal).

Statement of Qualifications – The submission of qualifications by an offeror in response to a Request for Qualifications.